In the

Supreme Court of the United States

OCTOBER TERM, 1930

No._____(Original)

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, STATE OF NEVADA, STATE OF UTAH, STATE OF NEW MEXICO, STATE OF COLORADO, STATE OF WYOMING, and RAY LYMAN WILBUR, Secretary of the Interior,

Defendants.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

The State of Arizona, appearing by its Attorney General, respectfully moves and prays the Court for leave to file its Bill of Complaint herewith submitted.

K. Berry Peterson,
Attorney General of the State of Arizona, Solicitor for Complainant.

Dean G. Acheson,
Clifton Mathews,
Of Counsel.

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Defendants.

BILL OF COMPLAINT.

The State of Arizona, appearing by its Attorney General, by leave of court files this its bill of complaint and respectfully alleges:

I

The State of Arizona, complainant herein, and the States of California, Nevada, Utah, New Mexico, Colorado and Wyoming, defendants herein, are States of the Union, duly admitted thereto and exercising equal sovereignty with the original and all other States of the

Union. Defendant Ray Lyman Wilbur is the Secretary of the Interior of the United States and is a citizen of the State of California.

II

The Colorado River rises in Colorado and flows in Colorado for a distance of 245 miles, thence in Utah for a distance of 285 miles, thence in Arizona for a distance of 292 miles, thence on the boundary between Arizona and Nevada for a distance of 145 miles, thence on the boundary between Arizona and California for a distance of 235 miles, thence on the boundary between Arizona and Mexico for a distance of 16 miles, thence in Mexico for a distance of 75 miles, and there enters the Gulf of California. Said river has a total length of 1,293 miles, of which 688 miles are in Arizona or on the boundary thereof. Lee Ferry is a point in the Colorado River 23 miles below the point where said river enters Arizona from Utah. Black Canyon is a point in said river 355 miles below Lee Ferry, and is in that part of said river which forms the boundary between Arizona and Nevada. Said river attains its greatest average annual flow at Black Canyon. Laguna Dam is a diversion dam in said river 276 miles below Black Canyon, and is in that part of said river which forms the boundary between Arizona and California. Said Laguna Dam is 13 miles above the City of Yuma and 18 miles above the point where said river becomes the boundary between Arizona and Mexico.

III

The principal tributaries of the Colorado River are the Gunnison River, which rises in Colorado and

flows in Colorado for a distance of 160 miles, and there enters the Colorado River; the Green River, which rises in Wyoming and flows in Wyoming for a distance of 246 miles, thence in Utah for a distance of 56 miles, thence in Colorado for a distance of 35 miles, thence in Utah for a distance of 272 miles, and there enters the Colorado River; the San Juan River, which rises in Colorado and flows in Colorado for a distance of 61 miles, thence in New Mexico for a distance of 110 miles, thence in Utah for a distance of 130 miles, and there enters the Colorado River; the Little Colorado River, which rises in Arizona and flows in Arizona for a distance of 268 miles, and there enters the Colorado River; the Virgin River, which rises in Utah and flows in Utah for a distance of 83 miles, thence in Arizona for a distance of 30 miles, thence in Nevada for a distance of 60 miles, and there enters the Colorado River; the Williams River, which rises in Arizona and flows in Arizona for a distance of 132 miles, and there enters the Colorado River; and the Gila River, which rises in New Mexico and flows in New Mexico for a distance of 115 miles, thence in Arizona for a distance of 406 miles, and there enters the Colorado River. The Gila River enters the Colorado River 10 miles below Laguna Dam, 286 miles below Black Canyon and 641 miles below Lee Ferry. The Williams River enters the Colorado River between Laguna Dam and Black Canyon. The Virgin River and the Little Colorado River enter the Colorado River between Black Canyon and Lee Ferry. All the other tributaries above mentioned enter the Colorado River above Lee Ferry. Said tributaries have a total combined length of 2,164 miles, of which 836 miles are in Arizona. No tributaries enter the Colorado River from California, nor does California contribute any appreciable quantity of water to said river.

IV

The drainage basin of the Colorado River in the United States has a total area of 240,000 square miles, of which 103,000 square miles are in Arizona, 4,000 square miles in California, 12,000 square miles in Nevada, 40,000 square miles in Utah, 23,000 square miles in New Mexico, 39,000 square miles in Colorado, and 19,000 square miles in Wyoming. Approximately 43 per cent. of the total area of said basin is in Arizona, and approximately 90 per cent. of the total area of Arizona is in said basin.

V

From the point where it enters Arizona to the point where it enters Mexico, the Colorado River has a fall of 3,230 feet, of which 2,200 feet occurs in Arizona, 650 feet on the boundary between Arizona and Nevada, 350 feet on the boundary between Arizona and California, and 30 feet on the boundary between Arizona and Mexico. That part of the Colorado River which flows in Arizona and on the boundary between Arizona and Nevada flows through an almost continuous series of deep canyons, the walls of which rise on each side of said river to a height varying from a few hundred feet to more than 5,000 feet, because of which said river in said canyon region is practically inaccessible. Throughout said canyon region there are numerous rapids, cataracts and other natural obstructions, because of which, and because of the great fall and rapid flow of said river, navigation thereof in Arizona and on the boundary between Arizona and Nevada has always been and is now utterly impossible.

VI

That part of the Colorado River which flows on the boundary between Arizona and California and between Arizona and Mexico flows between comparatively low banks, is therefore easily accessible, and is comparatively free from rapids and cataracts, but is obstructed by numerous sand-bars and is too shallow to permit of navigation. Said river carries great quantities of silt, which are constantly being deposited within and upon the bed thereof, and which, while so carried and after being so deposited, constitute a further obstacle to the navigation of said river. Another obstacle to the navigation of said river has resulted from the construction of said Laguna Dam by the Government of the United States, and the diversion of great quantities of water from said river for irrigation and other purposes. Because of said conditions, said river has never been, and is not now, a navigable river.

VII

The total average flow of the Colorado River and its tributaries in the United States is 18,000,000 acre-feet of water annually. Of said total flow, 9,000,000 acre-feet were appropriated and put to beneficial use in the United States prior to June 25, 1929, and said appropriated water has ever since been and is now being used and consumed. Of said appropriated water, 2,500,000 acre-feet are diverted annually from the Colorado River above Lee Ferry and from tributaries entering said river above Lee Ferry, and are used and consumed in Utah, New Mexico, Colorado and Wyoming, and 6,500,000 acre-feet are diverted annually from said river below Lee Ferry and from tributaries entering said river below Lee Ferry, and are used and consumed in Arizona, California, Ne-

vada and New Mexico. Of the appropriated water so diverted below Lee Ferry, 3,500,000 acre-feet are annually diverted, used and consumed in Arizona. Of the appropriated water so diverted, used and consumed in Arizona, 2,900,000 acre-feet are diverted from the Gila River and its tributaries. Of the total flow of the Colorado River and its tributaries in the United States, 9,000,000 acre-feet were on June 25, 1929, ever since have been, and are now wholly unappropriated. All of said unappropriated water flows in Arizona and on the boundary thereof; all of it is needed and can be put to beneficial use in Arizona; and all of it is subject to appropriation under the laws of Arizona. Of said unappropriated water, 8,000,000 acre-feet are flowing in the main stream of the Colorado River, and 1,000,000 acre-feet in tributaries entering said river between Lee Ferry and Laguna Dam. All of the water of the Gila River and its tributaries was appropriated and put to beneficial use in Arizona and New Mexico prior to June 25, 1929. There was not on said date, nor has there since been, nor is there now, any unappropriated water in the Gila River or any of its tributaries. To "appropriate" water means to take and divert a specified quantity thereof and put it to beneficial use in accordance with the laws of the State where such water is found, and, by so doing, to acquire, under said laws, a vested right to take and divert from the same source, and to use and consume, the same quantity of water annually forever, subject only to the rights of prior appropriators. Such is the sense in which the word "appropriate" and its derivatives are used in this bill of complaint.

VIII

All land in the drainage basin of the Colorado River is arid in character. In those parts of said basin

which are susceptible of irrigation, the average annual rainfall is as follows: In Arizona and California, less than 5 inches; in Nevada, 6 inches; in Wyoming, 7 inches; in Utah and New Mexico, 8 inches; in Colorado, 10 inches. Throughout said basin, in order to grow crops of any kind successfully, irrigation is necessary. Because of differences in soil, climate, rainfall, length of growing season, and other conditions, the quantity of water required per acre varies in different parts of said basin. The average quantity of water per acre required annually for the purpose of irrigation is as follows: In Arizona and California, 4.5 acre-feet; in Nevada, 3 acre-feet; in Utah, New Mexico, Colorado and Wyoming, 1.5 acre-feet.

IX

Because of the arid character of its land, irrigation is of the utmost importance to the State of Arizona. During the past 20 years the population of said State has increased from 204,000 to 421,000, and the assessed valuation of taxable property in said State has increased from $83,769,000 to $714,945,000. A great part of said increase in population and wealth has resulted from the constantly increasing use of irrigation in said State, and the consequent development of its agricultural land. The present welfare and prosperity of said State are largely the result of irrigation, and its future growth and progress are largely dependent upon the reclamation and irrigation of additional land in said State. In addition to the land now being irrigated, there are more than 2,000,000 acres of land in said State which are not now irrigated, but are susceptible of irrigation from the unappropriated water of the Colorado River and its tributaries, and which cannot be irrigated by any other means or from

any other source. All of said land is extremely fertile and, when irrigated, will be extremely productive. More than 200,000 acres of said land are owned and held by the State of Arizona. The irrigation of said land will require all of the unappropriated water of the Colorado River and its tributaries, aggregating 9,000,000 acre-feet annually, as aforesaid. Said land, although at present uncultivated and practically uninhabited, will, when irrigated, be capable of supporting a population of more than 500,000, and the irrigation of said land will add greatly to the wealth and taxable resources of the State of Arizona, and to the health, happiness, prosperity and general welfare of its inhabitants. Because of the expense of constructing, maintaining and operating the dams, reservoirs, canals and other works required for the irrigation of said land, it will not be feasible to irrigate said land in small separate tracts, but it will be necessary to combine such tracts into large projects, each project being operated and administered as a single unit. The organization of such projects and the construction, maintenance and operation of such dams, reservoirs, canals and other works will require financing on a large scale, which will be impossible unless water for the irrigation of said land can be appropriated and vested rights to the permanent use thereof acquired at or prior to the time of constructing such works.

X

In that part of the Colorado River which flows in Arizona and on the boundary between Arizona and Nevada, there are numerous sites suitable for the construction, maintenance and operation of the dams and reservoirs required for the irrigation of the land referred to in paragraph IX hereof. One of said sites is at Black Canyon, on the boundary between Arizona and Nevada.

By utilizing said sites, it would be possible and economically feasible to store in reservoirs situated in Arizona, or partly in Arizona and partly in Nevada, all of the water of the Colorado River, and to make all of said water available for irrigation. Said dam sites and reservoir sites are also suitable for the construction, maintenance and operation of plants for the generation of electric power from the water to be stored in such reservoirs. All the water of the Colorado River flowing past said dam sites and reservoir sites, including both the unappropriated water and water appropriated for beneficial use below said sites, is subject to appropriation for the generation of electric power at said sites. By the use of such power plants and such stored water, great quantities of electric power could be generated and sold for use in Arizona and elsewhere. The business, and all property used in connection with the business, of generating and selling such power would be subject to taxation and would yield substantial revenues to the State of Arizona, and the use of such power would add greatly to the welfare and prosperity of said State and its inhabitants. For the reasons aforesaid, the water of the Colorado River and the dam sites and reservoir sites above referred to constitute the greatest natural resource of the State of Arizona.

XI

Irrigation projects already formed and now in existence comprise more than 1,000,000 acres of the unirrigated but irrigable land referred to in paragraph IX hereof. More than 100,000 acres of the land in said irrigation projects are owned and held by the State of Arizona. None of the land in said projects is now irrigated, but all of it is susceptible of irrigation. The irrigation of

said land is practicable and feasible at the present time, and definite plans have been made for the irrigation thereof. Such irrigation will require 4,500,000 acre-feet annually of the unappropriated water now flowing in the main stream of the Colorado River. Permits for the appropriation of said water have been granted by the State Water Commissioner of the State of Arizona. In order to appropriate and use said water for the irrigation of the land in said projects, it will be necessary to store said water by means of dams and reservoirs to be constructed and maintained in that part of the Colorado River which flows in Arizona and on the boundary between Arizona and Nevada, and to utilize for that purpose the dam sites and reservoir sites mentioned in paragraph X hereof. Said plans contemplate the construction and use of such dams and reservoirs for the storage of the water to be used in irrigating said lands. There have also been formed and are now in existence certain power projects, whose purpose is to utilize said dam sites and reservoir sites for the generation and sale of electric power. Definite plans have been made for carrying out said purpose. The generation of said power will require the construction, maintenance and operation of dams, reservoirs and power plants at said sites. Plans and specifications therefor have been submitted to and approved by the State Engineer of the State of Arizona. But for the passage of the Boulder Canyon Project Act hereinafter referred to, the work of constructing said dams and reservoirs for the irrigation of said lands and for the generation of said electric power would long since have commenced, and if said act shall be held unconstitutional, as hereinafter prayed, said work will be immediately commenced and prosecuted to completion. Numerous persons and corporations desire to engage in

the business of storing and selling water, and in the business of generating and selling electric power in Arizona, and to utilize said dam sites and reservoir sites, including the one at Black Canyon, for that purpose. Said businesses and the property used in connection therewith would be subject to taxation and would yield substantial revenues to the State of Arizona.

XII

The State of Arizona was admitted to the Union on February 14, 1912. Upon its admission to the Union, said State acquired, has ever since possessed and exercised, and now possesses and exercises, sovereign jurisdiction and control of all water within its boundaries, including the water of the Colorado River and its tributaries. The Constitution of the State of Arizona provides that the common law doctrine of riparian water rights shall not obtain or be of any force or effect in said State. Statutes of the State of Arizona, heretofore duly enacted and now in force, being sections 3280 to 3286, inclusive, of the Revised Code of 1928, and sections 1 and 3 of Chapter 102 of the Session Laws of 1929, regulate and control the storage, diversion, appropriation and use of water, and the construction, operation and maintenance of dams and reservoirs in said State. A copy of said statutes is appended hereto at page 43. Said statutes provide that all water flowing in streams or other natural channels belongs to the public and is subject to appropriation; that the person first appropriating water shall have the better right thereto; that any person intending to appropriate water shall apply to the State Water Commissioner for a permit to make such appropriation; that if such application is approved by said Commissioner, the applicant may appropriate such water and construct

such works as may be necessary for that purpose; that if such application is rejected, the applicant shall take no steps toward appropriating such water or constructing such works; that when any such application, or the proposed use of the water sought to be appropriated, is a menace to the safety or against the interests and welfare of the public, it shall be rejected; that all dams shall be under the jurisdiction of the State Engineer; and that it shall be unlawful to construct, operate or maintain any dam except upon the approval of said Engineer. Under and by virtue of said statutes, all of the unappropriated water of the Colorado River and its tributaries, aggregating 9,000,000 acre-feet annually, was on June 25, 1929, ever since has been, and is now, subject to appropriation in Arizona. Said water cannot, nor can any part thereof, be lawfully appropriated, stored, diverted, used or disposed of, except as provided in said statutes.

XIII

Legislation was enacted in the year 1921 by the legislatures of the States of Arizona, California, Nevada, Utah, New Mexico, Colorado and Wyoming and by the Congress of the United States, providing for the appointment of commissioners by the Governors of said States and by the President of the United States, and authorizing such commissioners to negotiate a compact for the equitable apportionment of the water of the Colorado River and its tributaries, and to submit such compact to the legislatures of said States and to the Congress of the United States. Such commissioners were appointed and did draft and submit to said legislatures and to Congress a proposed compact entitled and hereinafter referred to as the Colorado River Compact, a copy of which is appended hereto at page 50. Said compact provides that,

as used therein, the term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States; that the term "Colorado River Basin" means all of the drainage area of said Colorado River System and all other territory within the United States to which the water of said system shall be beneficially applied; that the term "Upper Basin" means those parts of Arizona, Utah, New Mexico, Colorado, and Wyoming within and from which water naturally drains into said Colorado River System above Lee Ferry, and also all parts of said States located without said drainage area which are now or shall hereafter be beneficially served by water diverted from said system above Lee Ferry; that the term "Lower Basin" means those parts of Arizona, California, Nevada, Utah and New Mexico within and from which water naturally drains into said Colorado River System below Lee Ferry, and also all parts of said States located without said drainage area which are now or shall hereafter be beneficially served by water diverted from said system below Lee Ferry; that there is apportioned from said Colorado River System, in perpetuity, to said Upper Basin and to said Lower Basin, respectively, the exclusive, beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist; that if the United States shall recognize any right in Mexico to the use of any water of said system, such water shall be supplied from water unapportioned by said compact; that further equitable apportionment of the water of said system unapportioned by said compact may be made at any time after October 1, 1963; that inasmuch as the Colorado River has ceased to be navigable for commerce, and the reservation of its water for navigation would seriously

limit the development of its basin, the use of its water for purposes of navigation shall be subservient to the use of such water for domestic, agricultural and power purposes; and that said compact shall become binding and obligatory when it shall have been approved by the legislatures of all the signatory States (Arizona, California, Nevada, Utah, New Mexico, Colorado and Wyoming) and by the Congress of the United States.

XIV

Said Colorado River Compact is grossly inequitable, unjust and unfair to the State of Arizona, for the reasons and in the respects following, to-wit:

(1) Said compact attempts to apportion to said Upper Basin more, and to said Lower Basin less, than an equitable share of the water of said Colorado River System. Said compact attempts to apportion to each of said basins the same quantity of water, to-wit, 7,500,000 acre-feet annually, but said Lower Basin needs and can put to beneficial use more than twice the quantity of water which is needed or can be put to beneficial use in said Upper Basin. That part of said Lower Basin which is in Arizona needs and can put to beneficial use more than the total quantity of water which said compact attempts to apportion to said entire Lower Basin. Said Lower Basin includes practically all of Arizona. None of the water of said Colorado River System can be put to beneficial use in that part of Arizona which is in said Upper Basin. The 7,500,000 acre-feet of water which said compact attempts to apportion to each of said basins includes all water necessary to supply existing rights, which means all water heretofore appropriated and now being used. In said Lower Basin such appropriations amount to 6,500,000 acre-feet of water annually, whereas

in said Upper Basin they amount to only 2,500,000 acre-feet annually. Thus said compact attempts to apportion to said Lower Basin only 1,000,000 acre-feet of unappropriated water, whereas it attempts to apportion to said Upper Basin 5,000,000 acre-feet of unappropriated water annually. Under said compact, said 5,000,000 acre-feet of unappropriated water could not, nor could any part of it, be appropriated in said Lower Basin. Thus said compact attempts to deprive the State of Arizona, its citizens, inhabitants and property owners, of their right to appropriate said 5,000,000 acre-feet of unappropriated water, all of which is now subject to appropriation in Arizona.

(2) Said compact does not apportion or attempt to apportion all of the water of said Colorado River System, but attempts to apportion only 15,000,000 acre-feet thereof, and leaves unapportioned the remaining water of said system, aggregating 3,000,000 acre-feet annually. Said unapportioned water is a part of the unappropriated water of said Colorado River System. Said compact attempts to withdraw said unapportioned water from appropriation and to prohibit the appropriation thereof. This said compact attempts to do by providing that Mexican rights shall be supplied from said unapportioned water, and that said unapportioned water shall be subject to apportionment after October 1, 1963. Thus said compact attempts to deprive the State of Arizona, its citizens, inhabitants and property owners, of their right to appropriate said 3,000,000 acre-feet of unappropriated water, all of which is now subject to appropriation in Arizona.

(3) Said compact defines the term "Colorado River System" so as to include therein the Gila River and its tributaries, of which the total flow, aggregating 3,000,000 acre-feet of water annually, was appropriated

and put to beneficial use prior to June 25, 1929. The State of New Mexico has but a slight interest, and the States of California, Nevada, Utah, Colorado and Wyoming have no interest whatever in said water. Since said compact provides that the water apportioned thereby shall include all water necessary to supply existing rights, the effect of including the Gila River and its tributaries as a part of said system would be to reduce by 3,000,000 acre-feet annually the quantity of water now subject to appropriation in Arizona.

(4) Said compact defines the terms "Colorado River Basin," "Upper Basin" and "Lower Basin" so as to include therein not only the actual drainage basin of the Colorado River, but also all parts of Arizona, California, Nevada, Utah, Colorado, New Mexico and Wyoming outside of said drainage basin, which are now or shall hereafter be beneficially served by water diverted from said Colorado River System. Thus said compact pretends to recognize and attempts to establish a right to use said water outside of the actual drainage basin of the Colorado River, which pretended right the State of Arizona expressly denies. Arizona is almost wholly within the actual drainage basin of the Colorado River. No part of Arizona outside of said drainage basin is or can be beneficially served by water diverted from said system. Hence the State of Arizona would not be benefited, but would be greatly injured, by including in said Upper and Lower Basins areas situated outside of said drainage basin and served by water diverted from said Colorado River System. The effect of such inclusion would be to reduce the quantity of water now subject to appropriation in Arizona by such quantity as might be diverted for use in such outside areas.

For the reasons aforesaid, and for other good and sufficient reasons, the Legislature of the State of Arizona has never ratified or approved said compact, and said compact is therefore inoperative, void and of no effect.

XV

On December 21, 1928, the Congress of the United States passed, and the President approved, an act entitled "An Act to provide for the construction of works for the protection and development of the Colorado River Basin, for the approval of the Colorado River Compact, and for other purposes." The short title of said act is "Boulder Canyon Project Act." A copy of said act is appended hereto at page 58. Said act provides in section 1 thereof that, for the purpose of controlling floods, improving navigation, regulating the flow of the Colorado River and providing for the storage and delivery of the water thereof for reclamation of public lands and other beneficial uses, and for the generation of electric power as a means of making the project therein authorized a self-supporting and financially solvent undertaking, the Secretary of the Interior, subject to the terms of the Colorado River Compact, is authorized to construct, operate and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon adequate to create a storage reservoir of a capacity of not less than 20,000,000 acre-feet of water, and to construct, equip, operate and maintain at or near said dam a complete plant and incidental structures suitable for the fullest economic development of electric power from the water discharged from said reservoir. Said dam and reservoir, if constructed, will be partly in Arizona and partly in Nevada, and will occupy one of the sites mentioned in paragraph X hereof. Said dam and reservoir will store all of the

8,000,000 acre-feet of unappropriated water now flowing in the Colorado River, all of which is now subject to appropriation in Arizona. Said act does not require the Secretary of the Interior to comply with the laws of the State of Arizona in carrying out the provisions of said act, but contemplates that he shall disregard said laws and proceed in violation thereof.

XVI

Said act further provides in section 1 thereof that the Secretary of the Interior is authorized to construct, operate and maintain a canal and appurtenant structures connecting Laguna Dam with the Imperial and Coachella Valleys in California, and that no charge shall be made for water or for the use, storage or delivery of water for irrigation or potable purposes in said Imperial or Coachella Valleys. Said canal and appurtenant structures will cost approximately $40,000,000, and will be used for the purpose of diverting and conveying to said valleys in California, for use therein, the water to be stored in said reservoir, including the 8,000,000 acre-feet of unappropriated water now flowing in the Colorado River, all of which is now subject to appropriation in Arizona. Said canal and appurtenant structures will greatly aid and facilitate the diversion to and use of said water in California. Said act does not provide any similar facilities, or any facilities whatever, for the benefit of water users in Arizona, nor does said act exempt Arizona water users from the payment of charges for water or for the use, storage or delivery of water for irrigation or potable purposes.

XVII

Said act provides in section 2 (b) thereof that the Secretary of the Treasury is authorized to advance, from

time to time and within the appropriations therefor, such amounts as the Secretary of the Interior deems necessary for carrying out the provisions of said act, but that the aggregate amount of such advances shall not exceed the sum of $165,000,000. Said act provides in section 3 thereof that there is authorized to be appropriated from time to time such sums of money as may be necessary to carry out the purposes of said act, not exceeding in the aggregate $165,000,000.

XVIII

Said act provides in section 4 (a) thereof that it shall not take effect and that no authority shall be exercised thereunder unless and until (1) the States of Arizona, California, Nevada, Utah, New Mexico, Colorado and Wyoming shall ratify the Colorado River Compact, and the President by public proclamation shall so declare, or (2) if said States shall fail to ratify said compact within six months from the date of the passage of said act, then until six of said States, including the State of California, shall ratify said compact and consent to waive those provisions thereof which require its approval by the legislatures of all the signatory States, and shall approve said compact without conditions, save that of such six-state approval, and the President by public proclamation shall so declare, and, further, until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States, for the benefit of the States of Arizona, Nevada, Utah, New Mexico, Colorado and Wyoming, that the aggregate annual consumptive use of water of and from the Colorado River for use in California shall not exceed 4,400,000 acre-feet of the water apportioned to said Lower Basin by the Colorado River Compact, plus not more than one-half

of any excess or surplus water unapportioned by said compact, such uses always to be subject to the terms of said compact. The State of Arizona has not ratified or approved said compact, but the States of California, Nevada, Utah, New Mexico, Colorado and Wyoming ratified said compact prior to June 25, 1929, and consented to waive those provisions thereof which require its approval by all the signatory states, and approved said compact without conditions, save that of such six-state approval, and on said last mentioned date the President of the United States by public proclamation so declared. The State of California, by an act of its legislature approved March 4, 1929, made the agreement provided for in section 4 (a) of said Boulder Canyon Project Act.

XIX

Said act further provides in section 4 (a) thereof that the States of Arizona, California and Nevada are authorized to enter into an agreement which shall provide that, of the 7,500,000 acre-feet of water apportioned to said Lower Basin by the Colorado River Compact, there shall be apportioned to the State of Nevada 300,000 acre-feet, and to the State of Arizona 2,800,000 acre-feet, for exclusive beneficial consumptive use in perpetuity; that all of the provisions of said proposed agreement shall be subject in all parts to the provisions of said compact; and that said proposed agreement shall take effect upon the ratification of said compact by the States of Arizona, California and Nevada. Said proposed apportionment of 2,800,000 acre-feet of water is less than the quantity of water already appropriated in Arizona, and would provide no water for future appropriation in said State. Thus, under said proposed agreement, the State of Arizona, its citizens, inhabitants and property owners, would be de-

prived of their right to appropriate any of the unappropriated water of said Colorado River System, aggregating 9,000,000 acre-feet annually, all of which is now subject to appropriation in Arizona. The States of Arizona, California and Nevada have not entered into said proposed agreement, nor have they entered into any agreement whatsoever.

XX

Said act provides in section 4 (b) thereof that, before any money is appropriated for the construction of said dam or power plant, or any construction work done or contracted for, the Secretary of the Interior shall make provision for revenues, by contract, in accordance with the provisions of said act, adequate in his judgment to insure payment of all expenses of operation and maintenance of said works incurred by the United States, and the repayment, within 50 years from the date of the completion of said works, of all amounts advanced by the United States for the construction of said works (other than said canal and appurtenant structures), together with interest thereon at the rate of four per cent. per annum. The facts regarding the pretended contracts by which said Secretary has attempted to provide such revenues are set forth in paragraphs XXXII and XXXIII hereof. By an act approved July 3, 1930, and known as the "Second Deficiency Act, Fiscal Year 1930", Congress appropriated the sum of $10,660,000 for the commencement of construction of said dam and incidental works.

XXI

Said Boulder Canyon Project Act provides in section 5 thereof that said Secretary is authorized, under such general regulations as he may prescribe, to contract for the

storage of water in said reservoir, for the delivery thereof for irrigation, domestic use and generation of electric power, and for the delivery thereof to States, municipal corporations, political subdivisions and private corporations, upon charges that will provide revenue which, in addition to other revenue accruing under the Reclamation Law and under said act, will in his judgment cover all expenses of operation and maintenance incurred by the United States on account of works constructed under said act, and the payments to the United States provided for in section 4 (b) thereof; that contracts respecting water for irrigation and domestic use shall be for permanent service; and that no person shall have or be entitled to the use of the water stored in said reservoir except by contract with said Secretary. The effect of said act would be to withdraw from appropriation all of the water to be stored in said reservoir, including the 8,000,000 acre-feet of unappropriated water now flowing in the Colorado River, all of which is now subject to appropriation in Arizona; to prohibit the appropriation of said water; and to prohibit the use thereof, except by contract with the Secretary of the Interior. Under said act, said Secretary could not be required to deliver or to contract for the delivery of any of said water for use in Arizona, but could, if so minded, refuse to deliver or to contract for the delivery of any such water for any such use, and could thus withhold all of said water from use in Arizona. If said Secretary should choose to deliver or to contract for the delivery of any of said water for use in Arizona, he would be required by said act to make a charge for the storage and delivery of such water for such use, but said act does not require or permit said Secretary to make any charge for the storage or delivery of water for use in the Imperial and Coachella Valleys of California, it being

expressly provided in section 1 of said act that no such charge shall be made. In authorizing said Secretary to contract for the delivery of said stored water, said act does not restrict the use thereof to the drainage basin of the Colorado River, but permits said Secretary to contract for the delivery of said water for use outside of said basin.

XXII

Said act further provides in section 5 thereof that after repayment to the United States of all money advanced, with interest, charges shall be on such basis as may hereafter be prescribed by Congress; that the revenues derived therefrom shall be kept in a separate fund to be expended in said Colorado River Basin; and that general and uniform regulations shall be prescribed by said Secretary for the awarding of contracts for the sale and delivery of electric power, and for renewal of such contracts.

XXIII

Said act provides in section 6 thereof that said dam and reservoir shall be used, first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights; and third, for power; that the title to said dam, reservoir, power plant and incidental works shall forever remain in the United States; that the United States shall, until otherwise provided by Congress, control, manage and operate the same; that said Secretary may lease a unit or units of said power plant, with the right to generate electric power, or may lease the use of water for the generation of such power. Said act does not provide for the levy or collection by the State of Arizona of any tax or taxes on said dam, power plant and other

works, or on the operation thereof, but contemplates that the same shall be exempt from all taxation. The effect of said act would be to have said Secretary, on behalf of the United States, engage in the business of storing and selling water, the business of generating and selling electric power and the business of leasing water and equipment for the generation of such power; to utilize for that purpose the water and other natural resources of the State of Arizona; to prevent the use of said water and natural resources by other persons or corporations desiring to engage in such businesses; and thus to deprive said State of its right to levy and collect taxes on such businesses and on the property used in connection therewith.

XXIV

Said act provides in section 8 (a) thereof that the United States, its permittees, licensees and contractees and all users and appropriators of water stored, diverted, carried or distributed by said reservoir, canals and other works shall observe and be subject to and controlled by the Colorado River Compact in the construction, management and operation of said reservoir, canals and other works and in the storage, diversion, delivery and use of water for the generation of power, irrigation and other purposes, anything in said act to the contrary notwithstanding; and that all permits, licenses and contracts shall so provide. The pretended contracts hereinafter referred to, do so provide.

XXV

Said act provides in section 13 thereof that the Colorado River Compact is approved by the Congress of the United States; that those provisions of said compact

which require its approval by the legislatures of all the signatory States, are waived; and that said approval by Congress shall become effective when the State of California and at least five of the other signatory States shall approve said compact and consent to said waiver. The States of California, Nevada, Utah, New Mexico, Colorado and Wyoming have approved said compact and consented to said waiver. Thus the effect of said act would be to subject the State of Arizona to said compact, and to enforce said compact and make it effective in Arizona notwithstanding said State has never ratified or approved said compact.

XXVI

Said act further provides in section 13 thereof that the rights of the United States in or to the water of the Colorado River and its tributaries, and the rights of those claiming under the United States, shall be subject to and controlled by the Colorado River Compact; that all patents, grants, contracts, concessions, leases, permits, licenses, rights of way or other privileges from the United States or under its authority necessary or convenient for the use of said water, or for the generation of electric power by means thereof, or for the transmission of such power, shall be upon the express condition and with the express covenant that the rights of the recipients or holders thereof shall be subject to and controlled by said compact; and that said conditions and covenants shall be deemed to run with the land, and shall attach as a matter of law, whether set out or referred to in the instrument evidencing such patent, grant, contract, concession, lease, permit, license, right of way or other privilege, or not, and shall be deemed to be for the benefit of and be available to the States of Arizona, California, Nevada, Utah, New

Mexico, Colorado and Wyoming, and the users of water therein or thereunder, by way of suit, defense or otherwise, in any litigation respecting the water of the Colorado River or its tributaries. All lands in Arizona are owned and held either by the United States or by those claiming under the United States. All rights to the use of water for irrigation in Arizona are appurtenant to land, and such rights have no existence separate and apart from the land to which they are appurtenant. Consequently, the water of the Colorado River and its tributaries cannot be used for irrigation in Arizona except by those holding land under patents, grants, contracts, concessions, leases, permits or licenses from the United States or under its authority. Moreover, in order to irrigate Arizona land, it is frequently necessary to utilize rights of way over public land of the United States. Thus, under said act, all users of water for irrigation in Arizona would be subjected to the Colorado River Compact, notwithstanding said State has never ratified or approved said compact.

XXVII

Said act provides in section 16 thereof that any commission or commissioner duly authorized under the laws of any State ratifying the Colorado River Compact shall have the right to act in an advisory capacity to and in co-operation with the Secretary of the Interior in the exercise of any authority under the provisions of sections 4 and 5 of said act, and shall at all times have access to records of all Federal agencies empowered to act under said sections, and shall be entitled to have copies of said records on request. Duly authorized commissions and commissioners of the States of California, Nevada, Utah, New Mexico, Colorado and Wyoming have exercised and

are exercising the rights and privileges conferred by said section 16.

XXVIII

Said Boulder Canyon Project Act is in excess of the powers granted to Congress by the Constitution of the United States, and is unconstitutional and void, for the reasons following, to-wit:

(1) Said act attempts to deprive the State of Arizona of its sovereign jurisdiction and control of the water and other natural resources of said State, particularly the water of the Colorado River and its tributaries flowing in said State and the dam sites and reservoir sites situated therein; to vest such jurisdiction and control in the United States; to abrogate and supersede the laws of said State respecting the appropriation and use of said water and other natural resources; and to prohibit such appropriation and use, except as authorized and provided for in said act.

(2) Said act attempts to subject the State of Arizona to the Colorado River Compact, and to enforce said compact and make it effective in Arizona, notwithstanding said State has never ratified or approved said compact. Thereby said act attempts to deprive said State, its citizens, inhabitants and property owners, of their right to appropriate the 5,000,000 acre-feet of unappropriated water which said compact attempts to apportion to said Upper Basin, and of their right to appropriate the 3,000,000 acre-feet of unappropriated water which said compact leaves unapportioned and attempts to withdraw from appropriation, as aforesaid. Said 5,000,000 acre-feet of apportioned water and said 3,000,000 acre-feet of unapportioned water are a part of the un-

appropriated water of said Colorado River System, all of which is now subject to appropriation in Arizona.

(3) Said act attempts to authorize the Secretary of the Interior to construct, operate and maintain a dam and reservoir in the Colorado River at Black Canyon; to store in said reservoir the 8,000,000 acre-feet of unappropriated water now flowing in said river, all of which is now subject to appropriation in Arizona; to withhold all of said water from appropriation and to prohibit the appropriation thereof; to withhold all of said water from use in Arizona, or, if he permits any such use, to require payment of such charges therefor as he may prescribe; and to sell and dispose of any part or all of said water for use in other States, even to the extent of selling and delivering it for use outside of the drainage basin of the Colorado River; all of which is to be done without the consent of the State of Arizona and in violation of its laws. Thereby said act attempts to deprive the State of Arizona, it citizens, inhabitants and property owners, of their right to appropriate said 8,000,000 acre-feet of unappropriated water, and of their right to use any of said water in Arizona, except by contract with the Secretary of the Interior and upon payment of such charges as he may prescribe.

(4) Said act attempts to discriminate against the State of Arizona in favor of the State of California by providing that the water to be stored in said reservoir shall be delivered without charge for use in the Imperial and Coachella Valleys in California, whereas all water users in Arizona are required to pay for said stored water such charges as the Secretary of the Interior may prescribe, and by providing a canal and other facilities to enable water users in California to divert and use said

water, whereas no similar facilities, nor any facilities whatever, are provided for the benefit of water users in Arizona. Thereby said act attempts to aid and facilitate the use of said stored water in California, and to hinder and prevent the use thereof in Arizona. Said stored water will include the 8,000,000 acre-feet of unappropriated water now flowing in the Colorado River, all of which is now subject to appropriation in Arizona.

(5) Said act attempts to authorize the Secretary of the Interior, on behalf of the United States, to engage in the business of storing and selling water, the business of generating and selling electric power and the business of leasing water and equipment for the generation of such power; to utilize for that purpose the water and other natural resources of the State of Arizona; to prevent the use of said water and natural resources by other persons or corporations desiring to engage in such businesses; and to deprive said State of its right to levy and collect taxes on such businesses and on the property used in connection therewith.

The power to do all or any of the things so attempted by said act has not been granted to Congress by the Constitution of the United States.

XXIX

The recital in said act that the purpose thereof is the improvement of navigation and the reclamation of public land is a mere subterfuge and false pretense. That the improvement of navigation is not the purpose of said act is evident from the fact that the Colorado River is not navigable, and from the further fact that said act ratifies and approves the Colorado River Compact, and provides that the United States shall observe and be sub-

ject to and controlled by said compact in the construction, management and operation of said reservoir, canals and other works, and the storage, diversion, delivery and use of water for the generation of power, irrigation and other purposes, anything in said act to the contrary notwithstanding, and from the further fact that said compact provides that, inasmuch as the Colorado River has ceased to be navigable for commerce, and the reservation of its water for navigation would seriously limit the development of its basin, the use of its water for purposes of navigation shall be subservient to the use of such water for domestic, agricultural and power purposes. Even if said river were navigable, the diversion, sale and delivery of water therefrom, as authorized in said act, would not improve, but would destroy, its navigable capacity. That the reclamation of public land is not the purpose of said act is evident from the fact that 75 per cent. of all land which will or can be reclaimed or benefited by the construction of the dam, reservoir, power plant and other works authorized in said act, or by the storage and delivery of water as in said act provided, is privately owned land. Except for the purpose of having the Secretary of the Interior engage in the water and power business, as hereinabove alleged, the dam, reservoir, power plant and other works provided for in said act are unnecessary and inappropriate. If reclamation of public land were the true purpose of said act, a dam and reservoir having one-fifth of the capacity and requiring one-fifth of the expenditure authorized in said act would accomplish said purpose as adequately and efficiently as the dam, reservoir and other works therein authorized.

XXX

Notwithstanding the unconstitutionality of said act, defendant Ray Lyman Wilbur, Secretary of the In-

terior, has proceeded and is now proceeding thereunder, and has threatened and now threatens to enforce and carry out the provisions of said act, and, unless enjoined therefrom, will enforce and carry out all of said provisions, and will thereby accomplish and effect all of the things attempted by said act, as set forth in paragraph XXVIII hereof. Pursuant to and under color of said act, said defendant has seized and taken possession of all that part of the Colorado River which flows in Arizona and on the boundary thereof, and all of the water flowing in said river, including the 8,000,000 acre-feet of unappropriated water now flowing therein, and all of the dam sites and reservoir sites mentioned in paragraph X hereof, and now has said river, said water and said sites in his possession; has excluded and is now excluding the State of Arizona, its citizens, inhabitants and property owners from said river, said water and said sites, and from all access thereto; has prevented and is now preventing said State, its citizens, inhabitants and property owners from appropriating any of said 8,000,000 acre-feet of unappropriated water, all of which is now subject to appropriation in Arizona; has thereby prevented and is now preventing the irrigation of the land in the irrigation projects mentioned in paragraph XI hereof; and, unless enjoined therefrom, will continue so to do.

XXXI

Pursuant to and under color of said act, said defendant Ray Lyman Wilbur has made surveys, plans and specifications for, and has commenced, the construction of the dam, reservoir, power plant and other works provided for in said act. According to said plans and specifications, said dam will have a height of 727 feet, said reservoir will have a storage cacapity of 29,500,000

acre-feet, and said power plant will have a generating capacity of 1,200,000 horsepower. Also, pursuant to and under color of said act, said defendant has made and prescribed general regulations respecting contracts for the storage of water in said reservoir and for the delivery thereof for irrigation and domestic use. A copy of said regulations is appended hereto at page 78. Said regulations provide that water stored in said reservoir will be sold upon such terms and conditions as the Secretary of the Interior may fix from time to time, but that no charge shall be made for water, or for the use, storage or delivery of water for irrigation or potable purposes in the Imperial or Coachella Valleys of California; that no person shall have or be entitled to the use of any water stored in said reservoir, except by contract made in pursuance of said regulations; that contracts respecting water for domestic use shall be for permanent service; and that all purchases of water shall be subject to the terms and provisions of the Colorado River Compact and of the Boulder Canyon Project Act.

XXXII

Pursuant to and under color of said act and of said regulations, said defendant Ray Lyman Wilbur has made a pretended contract with the Metropolitan Water District of Southern California, a municipal corporation of the State of California, for the storage of water in said reservoir and for the diversion, sale and delivery of said water to said District for transportation to and consumptive use in said District. A copy of said pretended contract is appended hereto at page 79. Said District consists of the City of Los Angeles and the municipalities of Anaheim, Beverly Hills, Burbank, Colton, Glendale, Pasadena, San Bernardino, San Marino, Santa Ana and

Santa Monica, which are municipal corporations of the State of California. Said District is situated on the Pacific Coast approximately 300 miles distant from the Colorado River and outside of its drainage basin. No public land of the United States is contained within the limits of said District. Said pretended contract is for permanent service, and provides for the delivery to said District of 1,050,000 acre-feet of said stored water annually, and for the payment by said District of 25 cents per acre foot for water so delivered. Said 1,050,000 acre-feet of water, if sold and delivered to said District, as in said pretended contract provided, cannot, nor can any part thereof, be used for the reclamation of public land of the United States. Said water is a part of the 8,000,000 acre-feet of unappropriated water now flowing in the Colorado River, all of which is now subject to appropriation in Arizona. Said 1,050,000 acre-feet of water, together with the 6,500,000 acre-feet of water heretofore appropriated and now being used in said Lower Basin, will exceed the full amount of 7,500,000 acre-feet of water which said compact attempts to apportion to said Lower Basin. The delivery of said 1,050,000 acre-feet of water to said District, as in said pretended contract provided, would exhaust said apportionment, and, by the terms of said compact and of said Boulder Canyon Project Act, no water would then be available for or subject to appropriation in said Lower Basin, although there would still remain in said Colorado River System 7,950,000 acre-feet of unappropriated water per year. Thus the effect of carrying out the provisions of the Boulder Canyon Project Act and of said pretended contract would be to deprive the State of Arizona, its citizens, inhabitants and property owners, of their right to appropriate any of the unappropriated water of said Colorado River System, aggregating,

as aforesaid, 9,000,000 acre-feet annually, all of which is now subject to appropriation in Arizona.

XXXIII

Pursuant to and under color of said act, said defendant Ray Lyman Wilbur has made and prescribed general regulations for the lease of electric power to be generated at said dam. A copy of said regulations is appended hereto at page 89. Pursuant to and under color of said act and of said regulations, said defendant has made a pretended contract with said City of Los Angeles and Southern California Edison Company, Limited, a corporation of the State of California, for the lease of power privileges at said dam, and a pretended contract with said Metropolitan Water District of Southern California for the sale of electric power to be generated at said dam. Said pretended contract for the lease of power privileges provides for the leasing of certain generating machinery to be installed by said defendant, part to said City and part to said Company; for the generation by said lessees of all electric power allotted by said defendant; for the delivery to said lessees of falling water from said reservoir sufficient to generate all power so sold; for the sale to said lessees, respectively, of amounts of electric power specified therein; and for the payment by said lessees of the cost of said machinery, and certain further sums on account of electric power to be taken by said lessees. Said pretended contract is for a period of 50 years. The pretended contract with said District in this paragraph referred to provides for the sale to said District of specified amounts of electric power annually for a period of 50 years. Said power is to be used for the sole purpose of pumping into and in a proposed aqueduct, to be constructed by said District, the 1,050,000 acre-feet of

water to be sold and delivered to said District, as provided in the pretended contract referred to in the last preceding paragraph hereof. The three pretended contracts hereinabove referred to are made upon the express condition that all rights thereunder shall be subject to and controlled by the Colorado River Compact. For the reasons heretofore stated, all of said pretended contracts are void and of no effect. Nevertheless, said defendant, unless enjoined therefrom, will carry out all the provisions of said pretended contracts.

XXXIV

Said defendant Ray Lyman Wilbur has not complied and will not comply with the laws of the State of Arizona referred to in paragraph XII hereof, but has disregarded and will wholly disregard said laws in carrying out the provisions of said act. Said defendant has not applied and will not apply to the State Water Commissioner of the State of Arizona for a permit authorizing the construction of said dam, reservoir, power plant or other works, or the storage, use, diversion, sale or delivery of the water to be stored in said reservoir, nor has any such permit been granted. Said defendant has not applied and will not apply to the State Engineer of the State of Arizona for his approval of said dam and reservoir, nor has any such approval been granted.

XXXV

Pursuant to and under color of said act, the States of California, Nevada, Utah, New Mexico, Colorado and Wyoming, defendants herein, have caused and are causing their duly authorized commissions and commissioners to act, and said commissions and commissioners have acted and are acting, in an advisory capacity to and in

co-operation with said defendant Ray Lyman Wilbur in the exercise of the authority vested or attempted to be vested in him by sections 4 and 5 of said act. Said defendant States, by their said commissions and commissioners, have claimed and are claiming an interest in the three pretended contracts made by said defendant Ray Lyman Wilbur, as hereinabove alleged, for that, after repayment to the United States of all money advanced, with interest, the revenues to be derived from said pretended contracts are to be kept in a separate fund and expended within the Colorado River Basin, as provided in said section 5, and said defendant States have claimed and are claiming an interest in said fund. Also, pursuant to and under color of said act, said defendant States have claimed and are claiming that the Colorado River Compact became effective when approved by Congress and by said defendant States, and that the State of Arizona, its citizens, inhabitants and property owners, are subject to and controlled by said compact, notwithstanding said State has never ratified or approved said compact. Said defendant States have also aided and abetted, are aiding and abetting, and, unless enjoined therefrom, will continue to aid and abet, said defendant Ray Lyman Wilbur in carrying out the provisions of said act.

XXXVI

If the defendants shall enforce and carry out the provisions of said act and of said pretended contracts, the State of Arizona, its citizens, inhabitants and property owners, will be thereby prevented from appropriating any of the unappropriated water of the Colorado River and its tributaries, aggregating 9,000,000 acre-feet annually, all of which is now subject to appropriation in Arizona, and from using any of said unappropriated

water, except in accordance with and subject to the Colorado River Compact, and from using any of the 8,000,000 acre-feet thereof now flowing in the main stream of said river, except by contract with the Secretary of the Interior, and upon payment of such charges as he may prescribe; it will be impossible to appropriate water for the irrigation of the whole or any part of the 2,000,000 acres of unirrigated but irrigable land referred to in paragraphs IX, X and XI hereof; it will be impossible to finance the irrigation projects referred to in said paragraphs, or any other irrigation project in Arizona, or to construct the dams, reservoirs, canals and other works necessary for the irrigation of the whole or any part of said land; all of said land will remain forever unirrigated, uncultivated, uninhabited, unused, and incapable of use; it will be impossible for the power projects mentioned in said paragraph XI to carry out their plans for generating and selling electric power at plants to be constructed at the sites mentioned in said paragraphs X and IX; the great increase in population, wealth, prosperity and taxable resources of said State, which would have resulted from the irrigation of said land and from the use of said power sites, will be prevented and made impossible; and said State will thereby suffer great and irreparable injury, for which it has and can have no adequate remedy at law.

WHEREFORE, your complainant prays that the Colorado River Compact and the Boulder Canyon Project Act, and each and every part thereof, be decreed to be unconstitutional, void and of no effect; that the defendants and each of them be permanently enjoined and restrained from enforcing or carrying out said compact or said act, or any of the provisions thereof, and from carrying out the three pretended contracts hereinabove

referred to, or any of them, or any of their provisions, and from doing any other act or thing pursuant to or under color of said Boulder Canyon Project Act; and that the State of Arizona recover its costs herein expended, and have such other and further relief as to this Court may seem just and equitable.

K. Berry Peterson,
Attorney General of the State of Arizona, Solicitor for Complainant.

Dean G. Acheson,
Clifton Mathews,
Of Counsel.

APPENDIX

APPENDIX

APPENDIX

ARIZONA STATUTES

Revised Code of 1928, Sections 3280-3286.

Section 3280. The water of all sources flowing in streams, canyons, ravines or other natural channels, or in definite underground channels, whether perennial or intermittent, flood, waste or surplus water, and of lakes ponds and springs on the surface, belongs to the public, and is subject to appropriation and beneficial use, as herein provided. Beneficial use shall be the basis, measure and limit to the use of water. Whenever the owner of a right to the use of water shall cease or fail to use the water appropriated for five successive years, the right to the use shall cease, and the water shall revert to the public and be again subject to appropriation.

Section 3281. Any person may appropriate any unappropriated water for domestic, municipal, irrigation, stock watering, water power, or mining uses, for his personal use or for delivery to consumers; the person first appropriating shall have the better right. Such person, to effect the beneficial use, may construct and maintain reservoirs, dams, canals, ditches, flumes, and other necessary waterways.

Section 3282. The governor shall appoint a state water commissioner, who shall be familiar with water law, hydraulics and irrigation. The commissioner shall hold office for a period of six years, be removable by the governor for cause,

maintain his office at the capitol and receive a salary of four thousand dollars per annum and his necessary traveling expenses; he shall have general control and supervision of the waters of the state, and of the appropriation and of the distribution thereof, excepting the distribution reserved to water commissioners appointed by the courts under existing decrees.

Section 3283. The commissioner may make surveys, investigations and compilations of the water resources in the state, and their potential development, and may co-operate for such purposes with the United States; he shall maintain a permanent public depository for existing and future records of stream flow, and other data relating to the water resources of the state; he may formulate and prescribe rules and regulations governing the appropriation and distribution of water. The commissioner shall have an official seal bearing the words, "Arizona State Water Commissioner" which shall be affixed to certificates, maps, plans and like instruments issued from his office.

Section 3284. Any person, including a municipality, the state, or the United States, intending to acquire the right to the beneficial use of water, shall make an application to the commissioner for a permit to make an appropriation of water. The application shall state the name and address of the applicant; the water supply from which the appropriation is applied for; the nature and amount of the proposed use; the location, point of diversion and description of the proposed works by which it is to be put to bene-

ficial use; the time within which it is proposed to begin construction and the time required for the completion of the construction and the application of the water to the proposed use. If the application is for agricultural purposes it shall give the legal subdivisions of the land and the acreage to be irrigated; if for power purposes, the nature of the works by which power is to be developed, the pressure head and amount of water to be utilized, the points of diversion and release of the water, and the uses to which the power is to be applied; if for the construction of a reservoir, the dimensions and description of dam, the capacity of the reservoir for each foot in depth, the description of the land to be submerged, and the uses to be made of the impounded waters; if for municipal uses, the present population to be served, and an estimate of the future requirements; if for mining purposes, the location and the nature of the mines to be served, and the methods of supplying and utilizing the waters. The application shall be accompanied by such maps, drawings and data as prescribed by the commissioner.

Section 3285. Upon receipt of the application, the commissioner shall indorse thereon the date of its receipt and keep a record thereof. If the application is defective, he shall return the same for correction or completion, indorse thereon the date of and reasons for the return, and keep a record thereof. The application shall not lose its priority of filing on account of such defects if corrected, completed and refiled in the office of the commissioner within sixty days from

its return to the applicant, or within such further time as the commissioner may, by an order of record, allow. Applications shall be recorded in a book kept for that purpose. The commissioner shall approve all applications, made in proper form contemplating the application of water to a beneficial use; but, when the application or the proposed use conflicts with vested rights, is a menace to the safety, or against the interests and welfare of the public, he shall reject the application. An application for the appropriation of the waters of a stream within the state for the generation of electric energy in excess of twenty-five thousand horsepower, or an application for a permit to build a dam for the generation of hydro-electric energy on a stream within the state in excess of twenty-five thousand horsepower, shall not be approved or granted unless authorized by an act of the legislature. A change in the use of water appropriated for domestic, municipal or irrigation uses, shall not be made without the approval of the commissioner; if the change contemplates the generation of hydro-electric energy or power of over twenty-five thousand horsepower, such approval shall not be granted unless authorized by an act of the legislature. Before approving or rejecting the application, the commissioner may require additional information to enable him to properly guard the public interest, and may, on applications proposing to divert more than ten cubic feet of water per second, require a statement of the following facts: If a corporation, a copy of the articles of incorporation, the names and resi-

dences of directors and officers, and the amount of its authorized and paid up capital; if not a corporation, the name of the party proposing to construct the works, and a showing of his financial ability to carry out the proposed work. He may also require the applicant to show that the proposed diversion will not conflict with vested rights. An application may be approved for less water than applied for, if substantial reasons exist therefor, and shall not be approved for more than can be applied to a beneficial use. Applications for municipal uses may be approved to the exclusion of all subsequent appropriations, if the estimated needs of the municipality so demand, upon consideration and order by the commissioner. As between two or more pending conflicting applications for the use of water from a given water supply, where the capacity of the supply is not sufficient for all applications, preference shall be given by the commissioner according to the relative values to the public of the proposed use. The relative values to the public for this purpose are: 1. Domestic and municipal uses, domestic uses to be construed to include gardens, not exceeding one-half acre to each family; 2. irrigation and stock watering; 3. water power and mining uses.

Section 3286. The approval or rejection of the application shall be indorsed thereon, a record thereof kept by the commissioner, and the application returned immediately to the applicant. If approved, the applicant may construct the necessary works, take steps to apply the water to a beneficial use and perfect the appropriation.

If the application is rejected, the applicant shall take no steps toward the construction of the proposed work or the diversion of the water.

Session Laws of 1929, Chapter 102, Sections 1 and 3.

Section 1. The words "state engineer" as hereinafter used shall mean the Arizona state highway engineer. The word "dam" as hereinafter used means any dam and appurtenant works for the impounding or diversion of water fifteen feet or more in height from ground level to the spillway crest or whose impounding capacity will be more than ten acre feet. All dams heretofore or hereafter built or now under construction shall be under the jurisdiction of the state engineer. Dams of the state, or of the United States, or any of their political subdivisions, or dams of public utilities, and all dams without exception are included within the jurisdiction hereby conferred. It shall be unlawful to construct, reconstruct, repair, operate, maintain, enlarge, remove, or alter any dam, except upon the approval of the state engineer. The state engineer shall employ such clerical, engineering and other expert assistance as may be necessary for such dam supervision, and fix their compensation. The state engineer may employ consulting engineers, geologists and other expert consultants. The records pertaining to dam supervision shall be public documents. The state engineer shall adopt and revise rules of procedure and regulations and issue general orders to effectuate this act.

Section 3. Construction of any new dam or the enlargement of any existing dam shall not be commenced until a written approval of plans and specifications has been obtained from the state engineer. A separate application for each dam shall be filed with the state engineer upon forms provided by him, reciting the name and address of the owner, or his agent; the location, type, size, and height of the proposed dam and appurtenant works; the storage capacity of the reservoir, and such other information as the state engineer requests. It shall also give the area of the drainage basin, rainfall, and stream flow records, flood flow records, and estimates and other similar information required by the state engineer. He may also require information concerning subsoil and foundation conditions and may require that the site be drilled or otherwise prospected. Where the physical conditions and the size of the dam do not require information required in the preceding sentence, they may be waived by the state engineer. The application shall state: The means, plans, and specifications by which the stream or body of water is to be dammed, by-passed, or controlled during construction; or, the means, plans, and specifications thereof shall be submitted to the state engineer for approval prior to the beginning of construction. The state engineer shall have the same authority over the construction and maintenance of such means during construction of the dam as he has over similar work on the dam proper. The application shall further recite the proposed time of beginning and of completion of construc-

tion; the estimated cost thereof; the use to which the impounded or diverted water is to be put, and shall be accompanied by maps, plans, and specifications and state such details and dimensions as the state engineer may require. Such maps, plans, and specifications shall be a part of the application. Prior to the approval of plans and specifications the state engineer may require a surety company bond in an amount to secure the costs to the state in rendering safe any dam which may be left partially constructed. Such bond may be required only when the state engineer doubts the financial inability of the owner or contractor, or deems the bond advisable.

COLORADO RIVER COMPACT.

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, having resolved to enter into a compact under the Act of the Congress of the United States of America approved August 19, 1921 (42 Statutes at Large, page 171), and the Acts of the Legislatures of the said States, have through their Governors appointed as their Commissioners:

W. S. Norviel for the State of Arizona,

W. F. McClure for the State of California,

Delph E. Carpenter for the State of Colorado,

J. G. Scrugham for the State of Nevada,

Stephen B. Davis, Jr., for the State of New Mexico,

R. E. Caldwell for the State of Utah,

Frank C. Emerson for the State of Wyoming,

who, after negotiations participated in by Herbert Hoov-

er, appointed by the President as the representative of the United States of America, have agreed upon the following articles:

ARTICLE I.

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters, and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

ARTICLE II.

As used in this compact:

(a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah, and Wyoming.

(d) The term "States of the Lower Division" means the States of Arizona, California, and Nevada.

(e) The term "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the system above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the system below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power.

ARTICLE III.

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water which can not reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b), and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either Basin

shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment, as provided in paragraph (f), any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to the President of the United States of America, and it shall be the duty of the Governors of the signatory States and of the President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System, as mentioned in paragraph (f), subject to the legislative ratification of the signatory States and the Congress of the United States of America.

ARTICLE IV.

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its basin, the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural, and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any State within its boundaries of the appropriation, use, and distribution of water.

ARTICLE V.

The chief official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey, shall cooperate, ex officio:

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

ARTICLE VI.

Should any claim or controversy arise between any two or more of the signatory States (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado

River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State; the Governors of the States affected, upon the request of one of them, shall forthwith appoint Commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

ARTICLE VII.

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

ARTICLE VIII.

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that basin in which they are situate.

Article IX.

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

Article X.

This compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

Article XI.

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

In witness whereof the Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, New Mexico, this twenty-fourth day of November, A. D. one thousand nine hundred and twenty-two.

(Signed) W. S. Norviel.
(Signed) W. F. McClure.
(Signed) Delph E. Carpenter.
(Signed) J. G. Scrugham,
(Signed) Stephen B. Davis, Jr.
(Signed) R. E. Caldwell.
(Signed) Frank C. Emerson.

Approved:

(Signed) Herbert Hoover.

BOULDER CANYON PROJECT ACT.

An Act to provide for the construction of works for the protection and development of the Colorado River Basin, for the approval of the Colorado River compact, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters thereof for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy as a means of making the project herein authorized a self-supporting and financially solvent undertaking, the Secretary of the Interior, subject to the terms of the Colorado River compact hereinafter mentioned, is hereby authorized to construct, operate, and main-

tain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon adequate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water and a main canal and appurtenant structures located entirely within the United States connecting the Laguna Dam, or other suitable diversion dam, which the Secretary of the Interior is hereby authorized to construct if deemed necessary or advisable by him upon engineering or economic considerations, with the Imperial and Coachella Valleys in California, the expenditures for said main canal and appurtenant structures to be reimbursable, as provided in the reclamation law, and shall not be paid out of revenues derived from the sale or disposal of water power or electric energy at the dam authorized to be constructed at said Black Canyon or Boulder Canyon, or for water for potable purposes outside of the Imperial and Coachella Valleys: *Provided, however,* That no charge shall be made for water or for the use, storage, or delivery of water for irrigation or water for potable purposes in the Imperial or Coachella Valleys; also to construct and equip, operate, and maintain at or near said dam, or cause to be constructed, a complete plant and incidental structures suitable for the fullest economic development of electrical energy from the water discharged from said reservoir; and to acquire by proceedings in eminent domain, or otherwise, all lands, rights of way, and other property necessary for said purposes.

Sec. 2. (a) There is hereby established a special fund, to be known as the "Colorado River Dam fund" (hereinafter referred to as the "fund"), and to be available, as hereafter provided, only for carrying out the provisions of this Act. All revenues received in carrying

out the provisions of this Act shall be paid into and expenditures shall be made out of the fund, under the direction of the Secretary of the Interior.

(b) The Secretary of the Treasury is authorized to advance to the fund, from time to time and within the appropriations therefor, such amounts as the Secretary of the Interior deems necessary for carrying out the provisions of this Act, except that the aggregate amount of such advances shall not exceed the sum of $165,000,000. Of this amount the sum of $25,000,000 shall be allocated to flood control and shall be repaid to the United States out of 62½ per centum of revenues, if any, in excess of the amount necessary to meet periodical payments during the period of amortization, as provided in section 4 of this Act. If said sum of $25,000,000 is not repaid in full during the period of amortization, then 62½ per centum of all net revenues shall be applied to payment of the remainder. Interest at the rate of 4 per centum per annum accruing during the year upon the amounts so advanced and remaining unpaid shall be paid annually out of the fund, except as herein otherwise provided.

(c) Moneys in the fund advanced under subdivision (b) shall be available only for expenditures for construction and the payment of interest, during construction, upon the amounts so advanced. No expenditures out of the fund shall be made for operation and maintenance except from appropriations therefor.

(d) The Secretary of the Treasury shall charge the fund as of June 30 in each year with such amount as may be necessary for the payment of interest on advances made under subdivision (b) at the rate of 4 per centum per annum accrued during the year upon the

amounts so advanced and remaining unpaid, except that if the fund is insufficient to meet the payment of interest the Secretary of the Treasury may, in his discretion, defer any part of such payment, and the amount so deferred shall bear interest at the rate of 4 per centum per annum until paid.

(e) The Secretary of the Interior shall certify to the Secretary of the Treasury, at the close of each fiscal year, the amount of money in the fund in excess of the amount necessary for construction, operation, and maintenance, and payment of interest. Upon receipt of each such certificate the Secretary of the Treasury is authorized and directed to charge the fund with the amount so certified as repayment of the advances made under subdivision (b), which amount shall be covered into the Treasury to the credit of miscellaneous receipts.

Sec. 3. There is hereby authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such sums of money as may be necessary to carry out the purposes of this Act, not exceeding in the aggregate $165,000,000.

Sec. 4. (a) This Act shall not take effect and no authority shall be exercised hereunder and no work shall be begun and no moneys expended on or in connection with the works or structures provided for in this Act, and no water rights shall be claimed or initiated hereunder, and no steps shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works or structures unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have ratified the Colorado River compact, mentioned in section 13 hereof, and the President by public proclamation shall have

so declared, or (2) if said States fail to ratify the said compact within six months from the date of the passage of this Act then, until six of said States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and shall have approved said compact without conditions, save that of such six-State approval, and the President by public proclamation shall have so declared, and, further, until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this Act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

The States of Arizona, California, and Nevada are authorized to enter into an agreement which shall provide (1) that of the 7,500,000 acre-feet annually apportioned to the lower basin by paragraph (a) of Article III of the Colorado River compact, there shall be apportioned to the State of Nevada 300,000 acre-

feet and to the State of Arizona 2,800,000 acre-feet for exclusive beneficial consumptive use in perpetuity, and (2) that the State of Arizona may annually use one-half of the excess or surplus waters unapportioned by the Colorado River compact, and (3) that the State of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of said State, and (4) that the waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or otherwise to the United States of Mexico but if, as provided in paragraph (c) of Article III of the Colorado River compact, it shall become necessary to supply water to the United States of Mexico from waters over and above the quantities which are surplus as defined by said compact, then the State of California shall and will mutually agree with the State of Arizona to supply, out of the main stream of the Colorado River, one-half of any deficiency which must be supplied to Mexico by the lower basin, and (5) that the State of California shall and will further mutually agree with the States of Arizona and Nevada that none of said three States shall withhold water and none shall require the delivery of water, which can not reasonably be applied to domestic and agricultural uses, and (6) that all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado River compact, and (7) said agreement to take effect upon the ratification of the Colorado River compact by Arizona, California, and Nevada.

(b) Before any money is appropriated for the construction of said dam or power plant, or any con-

struction work done or contracted for, the Secretary of the Interior shall make provision for revenues by contract, in accordance with the provisions of this Act, adequate in his judgment to insure payment of all expenses of operation and maintenance of said works incurred by the United States and the repayment, within fifty years from the date of the completion of said works, of all amounts advanced to the fund under subdivision (b) of section 2 for such works, together with interest thereon made reimbursable under this Act.

Before any money is appropriated for the construction of said main canal and appurtenant structures to connect the Laguna Dam with the Imperial and Coachella Valleys in California, or any construction work is done upon said canal or contracted for, the Secretary of the Interior shall make provision for revenues, by contract or otherwise, adequate in his judgment to insure payment of all expenses of construction, operation, and maintenance of said main canal and appurtenant structures in the manner provided in the reclamation law.

If during the period of amortization the Secretary of the Interior shall receive revenues in excess of the amount necessary to meet the periodical payments to the United States as provided in the contract, or contracts, executed under this Act, then, immediately after the settlement of such periodical payments, he shall pay to the State of Arizona 18¾ per centum of such excess revenues and to the State of Nevada 18¾ per centum of such excess revenues.

Sec. 5. That the Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for the delivery thereof at such points

on the river and on said canal as may be agreed upon, for irrigation and domestic uses, and generation of electrical energy and delivery at the switchboard to States, municipal corporations, political subdivisions, and private corporations of electrical energy generated at said dam, upon charges that will provide revenue which, in addition to other revenue accruing under the reclamation law and under this Act, will in his judgment cover all expenses of operation and maintenance incurred by the United States on account of works constructed under this Act and the payments to the United States under subdivision (b) of section 4. Contracts respecting water for irrigation and domestic uses shall be for permanent service and shall conform to paragraph (a) of section 4 of this Act. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated.

After the repayments to the United States of all money advanced with interest, charges shall be on such basis and the revenues derived therefrom shall be kept in a separate fund to be expended within the Colorado River Basin as may hereafter be prescribed by the Congress.

General and uniform regulations shall be prescribed by the said Secretary for the awarding of contracts for the sale and delivery of electrical energy, and for renewals under subdivision (b) of this section, and in making such contracts the following shall govern:

(a) No contract for electrical energy or for generation of electrical energy shall be of longer duration than fifty years from the date at which such energy is ready for delivery.

Contracts made pursuant to subdivision (a) of this section shall be made with a view to obtaining reasonable returns and shall contain provisions whereby at the end of fifteen years from the date of their execution and every ten years thereafter, there shall be readjustment of the contract, upon the demand of either party thereto, either upward or downward as to price, as the Secretary of the Interior may find to be justified by competitive conditions at distributing points or competitive centers, and with provisions under which disputes or disagreements as to interpretation or performance of such contract shall be determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such readjustments or proceedings.

(b) The holder of any contract for electrical energy not in default thereunder shall be entitled to a renewal thereof upon such terms and conditions as may be authorized or required under the then existing laws and regulations, unless the property of such holder dependent for its usefulness on a continuation of the contract be purchased or acquired and such holder be compensated for damages to its property, used and useful in the transmission and distribution of such electrical energy and not taken, resulting from the termination of the supply.

(c) Contracts for the use of water and necessary privileges for the generation and distribution of hydroelectric energy or for the sale and delivery of electrical energy shall be made with responsible applicants therefor who will pay the price fixed by the said Secretary with a view to meeting the revenue requirements herein provided for. In case of conflicting applications, if any,

such conflicts shall be resolved by the said Secretary, after hearing, with due regard to the public interest, and in conformity with the policy expressed in the Federal Water Power Act as to conflicting applications for permits and licenses, except that preference to applicants for the use of water and appurtenant works and privileges necessary for the generation and distribution of hydroelectric energy, or for delivery at the switchboard of a hydroelectric plant, shall be given, first, to a State for the generation or purchase of electric energy for use in the State, and the States of Arizona, California, and Nevada shall be given equal opportunity as such applicants.

The rights covered by such preference shall be contracted for by such State within six months after notice by the Secretary of the Interior and to be paid for on the same terms and conditions as may be provided in other similar contracts made by said Secretary: *Provided, however,* That no application of a State or a political subdivision for an allocation of water for power purposes or of electrical energy shall be denied or another application in conflict therewith be granted on the ground that the bond issue of such State or political subdivision, necessary to enable the applicant to utilize such water and appurtenant works and privileges necessary for the generation and distribution of hydroelectric energy or the electrical energy applied for, has not been authorized or marketed, until after a reasonable time, to be determind by the said Secretary, has been given to such applicant to have such bond issue authorized and marketed.

(d) Any agency receiving a contract for electrical energy equivalent to one hundred thousand firm horsepower, or more, may, when deemed feasible by the

said Secretary, from engineering and economic considerations and under general regulations prescribed by him, be required to permit any other agency having contracts hereunder for less than the equivalent of twenty-five thousand firm horsepower, upon application to the Secretary of the Interior made within sixty days from the execution of the contract of the agency the use of whose transmission line is applied for, to participate in the benefits and use of any main transmission line constructed or to be constructed by the former for carrying such energy (not exceeding, however, one-fourth the capacity of such line), upon payment by such other agencies of a reasonable share of the cost of construction, operation, and maintenance thereof.

The use is hereby authorized of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation, and maintenance of main transmission lines to transmit said electrical energy.

Sec. 6. That the dam and reservoir provided for by section 1 hereof shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power. The title to said dam, reservoir, plant, and incidental works shall forever remain in the United States, and the United States shall, until otherwise provided by Congress, control, manage, and operate the same, except as herein otherwise provided: *Provided, however,* That the Secretary of the Interior may, in his discretion, enter into contracts of lease of a unit or units of any Government-built plant, with right to generate electrical energy,

or, alternatively, to enter into contracts of lease for the use of water for the generation of electrical energy as herein provided, in either of which events the provisions of section 5 of this Act relating to revenue, term, renewals, determination of conflicting applications, and joint use of transmission lines under contracts for the sale of electrical energy, shall apply.

The Secretary of the Interior shall prescribe and enforce rules and regulations conforming with the requirements of the Federal Water Power Act, so far as applicable, respecting maintenance of works in condition of repair adequate for their efficient operation, maintenance of a system of accounting, control of rates and service in the absence of State regulation or interstate agreement, valuation for rate-making purposes, transfers of contracts, contracts extending beyond the lease period, expropriation of excessive profits; recapture and/or emergency use by the United States of property of lessees, and penalties for enforcing regulations made under this Act or penalizing failure to comply with such regulations or with the provisions of this Act. He shall also conform with other provisions of the Federal Water Power Act and of the rules and regulations of the Federal Power Commission, which have been devised or which may be hereafter devised, for the protection of the investor and consumer.

The Federal Power Commission is hereby directed not to issue or approve any permits or licenses under said Federal Water Power Act upon or affecting the Colorado River or any of its tributaries, except the Gila River, in the States of Colorado, Wyoming, Utah, New Mexico, Nevada, Arizona, and California until this Act shall become effective as provided in section 4 herein.

Sec. 7. That the Secretary of the Interior may, in his discretion, when repayments to the United States of all money advanced, with interest, reimbursable hereunder, shall have been made, transfer the title to said canal and appurtenant structures, except the Laguna Dam and the main canal and appurtenant structures down to and including Syphon Drop, to the districts or other agencies of the United States having a beneficial interest therein in proportion to their respective capital investments under such form of organization as may be acceptable to him. The said districts or other agencies shall have the privilege at any time of utilizing by contract or otherwise such power possibilities as may exist upon said canal, in proportion to their respective contributions or obligations toward the capital cost of said canal and appurtenant structures from and including the diversion works to the point where each respective power plant may be located. The net proceeds from any power development on said canal shall be paid into the fund and credited to said districts or other agencies on their said contracts, in proportion to their rights to develop power, until the districts or other agencies using said canal shall have paid thereby and under any contract or otherwise an amount of money equivalent to the operation and maintenance expense and cost of construction thereof.

Sec. 8. (a) The United States, its permittees, licensees, and contractees, and all users and appropriators of water stored, diverted, carried, and/or distributed by the reservoir, canals, and other works herein authorized, shall observe and be subject to and controlled by said Colorado River compact in the construction, management, and operation of said reservoir, canals, and other works and the storage, diversion, delivery, and use

of water for the generation of power, irrigation, and other purposes, anything in this Act to the contrary notwithstanding, and all permits, licenses, and contracts shall so provide.

(b) Also the United States, in constructing, managing, and operating the dam, reservoir, canals, and other works herein authorized, including the appropriation, delivery, and use of water for the generation of power, irrigation, or other uses, and all users of water thus delivered and all users and appropriators of waters stored by said reservoir and/or carried by said canal, including all permittees and licensees of the United States or any of its agencies; shall observe and be subject to and controlled, anything to the contrary herein notwithstanding, by the terms of such compact, if any, between the States of Arizona, California, and Nevada, or any two thereof, for the equitable division of the benefits, including power, arising from the use of water accruing to said States, subsidiary to and consistent with said Colorado River compact, which may be negotiated and approved by said States and to which Congress shall give its consent and approval on or before January 1, 1929; and the terms of any such compact concluded between said States and approved and consented to by Congress after said date: *Provided*, That in the latter case such compact shall be subject to all contracts, if any, made by the Secretary of the Interior under section 5 hereof prior to the date of such approval and consent by Congress.

Sec. 9. That all lands of the United States found by the Secretary of the Interior to be practicable of irrigation and reclamation by the irrigation works authorized herein shall be withdrawn from public entry. Thereafter, at the direction of the Secretary of the In-

terior, such lands shall be opened for entry, in tracts varying in size but not exceeding one hundred and sixty acres, as may be determined by the Secretary of the Interior, in accordance with the provisions of the reclamation law, and any such entryman shall pay an equitable share in accordance with the benefits received, as determined by the said Secretary, of the construction cost of said canal and appurtenant structures; said payments to be made in such installments and at such times as may be specified by the Secretary of the Interior, in accordance with the provisions of the said reclamation law, and shall constitute revenue from said project and be covered into the fund herein provided for: *Provided*, That all persons who have served in the United States Army, Navy, or Marine Corps during the war with Germany, the war with Spain, or in the suppression of the insurrection in the Philippines, and who have been honorably separated or discharged therefrom or placed in the Regular Army or Navy Reserve, shall have the exclusive preference right for a period of three months to enter said lands, subject, however, to the provisions of subsection (c) of section 4, Act of December 5, 1924 (Forty-third Statutes at Large, page 702); and also, so far as practicable, preference shall be given to said persons in all construction work authorized by this Act: *Provided further*, That in the event such an entry shall be relinquished at any time prior to actual residence upon the land by the entryman for not less than one year, lands so relinquished shall not be subject to entry for a period of sixty days after the filing and notation of the relinquishment in the local land office, and after the expiration of said sixty-day period such lands shall be open to entry, subject to the preference in this section provided.

Sec. 10. That nothing in this Act shall be con-

strued as modifying in any manner the existing contract, dated October 23, 1918, between the United States and the Imperial Irrigation District, providing for a connection with Laguna Dam; but the Secretary of the Interior is authorized to enter into contract or contracts with the said district or other districts, persons, or agencies for the construction, in accordance with this Act, of said canal and appurtenant structures, and also for the operation and maintenance thereof, with the consent of the other users.

Sec. 11. That the Secretary of the Interior is hereby authorized to make such studies, surveys, investigations, and do such engineering as may be necessary to determine the lands in the State of Arizona that should be embraced within the boundaries of a reclamation project, heretofore commonly known and hereafter to be known as the Parker-Gila Valley reclamation project, and to recommend the most practicable and feasible method of irrigating lands within said project, or units thereof, and the cost of the same; and the appropriation of such sums of money as may be necessary for the aforesaid purposes from time to time is hereby authorized. The Secretary shall report to Congress as soon as practicable, and not later than December 10, 1931, his findings, conclusions, and recommendations regarding such project.

Sec. 12. "Political subdivision" or "political subdivisions" as used in this Act shall be understood to include any State, irrigation or other district, municipality, or other governmental organization.

"Reclamation law" as used in this Act shall be understood to mean that certain Act of the Congress of the United States approved June 17, 1902, entitled "An

Act appropriating the receipts from the sale and disposal of public land in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," and the Acts amendatory thereof and supplemental thereto.

"Maintenance" as used herein shall be deemed to include in each instance provision for keeping the works in good operating condition.

"The Federal Water Power Act," as used in this Act, shall be understood to mean that certain Act of Congress of the United States approved June 10, 1920, entitled "An Act to create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto; and to repeal section 18 of the River and Harbor Appropriation Act, approved August 8, 1917, and for other purposes," and the Acts amendatory thereof and supplemental thereto.

"Domestic" whenever employed in this Act shall include water uses defined as "domestic" in said Colorado River compact.

Sec. 13. (a) The Colorado River compact signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," is hereby approved by the Congress of the United States, and the provisions of the first paragraph of article 11 of the said Colorado River compact, making said compact binding and obligatory when it shall have been approved by the legislature of each of the

signatory States, are hereby waived, and this approval shall become effective when the State of California and at least five of the other States mentioned, shall have approved or may hereafter approve said compact as aforesaid and shall consent to such waiver, as herein provided.

(b) The rights of the United States in or to waters of the Colorado River and its tributaries howsoever claimed or acquired, as well as the rights of those claiming under the United States, shall be subject to and controlled by said Colorado River compact.

(c) Also all patents, grants, contracts, concessions, leases, permits, licenses, rights of way, or other privileges from the United States or under its authority, necessary or convenient for the use of waters of the Colorado River or its tributaries, or for the generation or transmission of electrical energy generated by means of the waters of said river or its tributaries, whether under this Act, the Federal Water Power Act, or otherwise, shall be upon the express condition and with the express covenant that the rights of the recipients or holders thereof to waters of the river or its tributaries, for the use of which the same are necessary, convenient, or incidental, and the use of the same shall likewise be subject to and controlled by said Colorado River compact.

(d) The conditions and covenants referred to herein shall be deemed to run with the land and the right, interest, or privilege therein and water right, and shall attach as a matter of law, whether set out or referred to in the instrument evidencing any such patent, grant, contract, concession, lease, permit, license, right of way, or other privilege from the United States or under its authority, or not, and shall be deemed to be for

the benefit of and be available to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and the users of water therein or thereunder, by way of suit, defense, or otherwise, in any litigation respecting the waters of the Colorado River or its tributaries.

Sec. 14. This Act shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation, and management of the works herein authorized, except as otherwise herein provided.

Sec. 15. The Secretary of the Interior is authorized and directed to make investigation and public reports of the feasibility of projects for irrigation, generation of electric power, and other purposes in the States of Arizona, Nevada, Colorado, New Mexico, Utah, and Wyoming for the purpose of making such information available to said States and to the Congress, and of formulating a comprehensive scheme of control and the improvement and utilization of the water of the Colorado River and its tributaries. The sum of $250,000 is hereby authorized to be appropriated from said Colorado River Dam fund, created by section 2 of this Act, for such purposes.

Sec. 16. In furtherance of any comprehensive plan formulated hereafter for the control, improvement, and utilization of the resources of the Colorado River system and to the end that the project authorized by this Act may constitute and be administered as a unit in such control, improvement, and utilization, any commission or commissioner duly authorized under the laws of any ratifying State in that behalf shall have the right to act in an advisory capacity to and in cooperation with the

Secretary of the Interior in the exercise of any authority under the provisions of sections 4, 5, and 14 of this Act, and shall have at all times access to records of all Federal agencies empowered to act under said sections, and shall be entitled to have copies of said records on request.

Sec. 17. Claims of the United States arising out of any contract authorized by this Act shall have priority over all others, secured or unsecured.

Sec. 18. Nothing herein shall be construed as interfering with such rights as the States now have either to the waters within their borders or to adopt such policies and enact such laws as they may deem necessary with respect to the appropriation, control, and use of waters within their borders, except as modified by the Colorado River compact or other interstate agreement.

Sec. 19. That the consent of Congress is hereby given to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming to negotiate and enter into compacts or agreements, supplemental to and in conformity with the Colorado River compact and consistent with this Act for a comprehensive plan for the development of the Colorado River and providing for the storage, diversion, and use of the waters of said river. Any such compact or agreement may provide for the construction of dams, headworks, and other diversion works or structures for flood control, reclamation, improvement of navigation, division of water, or other purposes and/or the construction of power houses or other structures for the purpose of the development of water power and the financing of the same; and for such purposes may authorize the creation of interstate commissions and/or the creation of corporations, authorities, or other instrumentalities.

(a) Such consent is given upon condition that a representative of the United States, to be appointed by the President, shall participate in the negotiations and shall make report to Congress of the proceedings and of any compact or agreement entered into.

(b) No such compact or agreement shall be binding or obligatory upon any of such States unless and until it has been approved by the legislature of each of such States and by the Congress of the United States.

Sec. 20. Nothing in this Act shall be construed as a denial or recognition of any rights, if any, in Mexico to the use of the waters of the Colorado River system.

Sec. 21. That the short title of this Act shall be "Boulder Canyon Project Act."

Approved, December 21, 1928.

WATER REGULATIONS.

Washington, April 23, 1930.

Storage water in Boulder Canyon Reservoir will be sold upon such terms and conditions as the Secretary may fix from time to time. Water so sold may be delivered at such points on the river as may be agreed upon for irrigation and domestic uses.

Contracts respecting water for domestic uses shall be for permanent service, and shall conform to Paragraph (a) of Section 4 of the Boulder Canyon Project Act. No charge shall be made for water or for the use, storage or delivery of water for irrigation or for water for potable purposes in the Imperial or Coachella Valleys.

Where water is taken from the Colorado River above the Boulder Canyon Dam, the utilization of the power plant will be impaired to that extent, and the right is reserved to make a higher charge for water taken above the dam, than if delivery is made below the dam.

No person shall have or be entitled to have the use for any purpose of the water stored in Boulder Canyon Reservoir except by contract made in pursuance of these regulations. All purchases of water shall be subject to all the terms and provisions of the Colorado River Compact and of the Boulder Canyon Project Act.

The right is reserved to amend or extend these regulations from time to time consistently with said compact and the laws of Congress, as the public need may require.

RAY LYMAN WILBUR,
Secretary of the Interior.

WATER CONTRACT.

(1) This contract, made this 24th day of April, nineteen hundred thirty, pursuant to the Act of Congress approved June 17, 1902, (32 Stat., 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the reclamation law, and particularly pursuant to the Act of Congress approved December 21, 1928, (45 Stat., 1057), designated the Boulder Canyon Project Act, between the United States of America, hereinafter referred to as the United States, acting for this purpose by Ray Lyman Wilbur, Secretary of the Interior, hereinafter styled the Secretary, and The Metropolitan Water District of South-

ern California, a public corporation, hereinafter styled the District, organized and existing under the laws of the State of California;

Witnesseth:

(2) Whereas, for the purposes of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters for reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary, subject to the terms of the Colorado River Compact, is authorized to construct, operate and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon, adequate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water; and

(3) Whereas, after full consideration of the advantages of both the Black Canyon and Boulder Canyon dam sites, the Secretary has determined upon Black Canyon as the site of the aforesaid dam, hereinafter styled the Boulder Canyon Dam, creating thereby a reservoir to be hereinafter styled the Boulder Canyon Reservoir and has determined that the revenues provided for by this contract, together with other contracts in accordance with the provisions of the Boulder Canyon Project Act, are adequate in his judgment to insure payment of all expenses of operation and maintenance of the Boulder Canyon Dam and appurtenant works incurred by the United States, and the repayment within fifty (50) years from the date of completion of said works of all amounts advanced to the Colorado River Dam Fund under Subdivision (b) of Section 2 of the Boulder Canyon Project

Act, together with interest thereon made reimbursable under said Act; and

(4) Whereas, the District is desirous of entering into a contract for the delivery to it of water from Boulder Canyon Reservoir:

(5) Now, therefore, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

(6) The United States shall deliver to the District each year from the Boulder Canyon Reservoir at a point in the Colorado River immediately below Boulder Canyon Dam, or as provided in Article 10 hereof, up to but not to exceed one million fifty thousand (1,050,000) acre feet of water, which shall be delivered continuously as far as reasonable diligence will permit; provided, that such amount is without prejudice to any additional rights which the District may have or acquire in or to the waters of the Colorado River, or to the power of the parties to contract hereafter with reference thereto. The United States shall not be obligated to deliver water to the District when for any reason such delivery would interfere with the use of Boulder Canyon Dam, and reservoir for river regulation, improvement of navigation, flood control, and/or satisfaction of present perfected rights, in or to the waters of the Colorado River, or its tributaries, in pursuance of Article VIII of the Colorado River Compact, and this contract is made upon the express condition and with the express covenant that the right of the District to waters of the Colorado River, or its tributaries, is subject to and controlled by the Colorado River Compact. The United States reserves the right to discontinue or temporarily reduce the amount of water to be delivered for the purpose of investigation,

inspection, maintenance, repairs, replacement or installation of equipment and/or machinery at Boulder Canyon Dam, but so far as feasible the United States will give the District reasonable notice in advance of such temporary discontinuance or reduction. The United States, its officers, agents and employees shall not be liable for damages when, for any reason whatsoever, suspensions or reductions in delivery of water occur. This contract is for permanent service, but is made subject to the express covenant and condition that in the event water for the District is not taken or diverted by the District hereunder for District purposes within a period of ten (10) years from and after completion of Boulder Canyon Dam as announced by the Secretary, it may in such event, upon the written order of the Secretary, and after hearing become null and void and of no effect.

(7) The District shall receive the water to be delivered to it by the United States under the terms hereof at the point of delivery above stated and shall at its own expense convey such water to its proposed aqueduct, and shall perform all acts required by law or custom in order to maintain its control over such water and to secure and maintain its lawful and proper diversion from the Colorado River.

(8) The water to be delivered hereunder shall be measured at the intake of the District's proposed aqueduct by such measuring and controlling devices or such automatic gauges or both, as shall be satisfactory to the Secretary. Said measuring and controlling devices, or automatic gauges, shall be furnished, installed and maintained by and at the expense of the District, but they shall be and remain at all times under the complete control of the United States, whose authorized representa-

tives may at all times have access to them over the lands and rights of way of the District.

(9) The District shall make full and complete written monthly reports as directed by the Secretary, on forms to be supplied by the United States, of all water diverted from the Colorado River. Such reports shall be made by the fifth day of the month immediately succeeding the month in which the water is diverted, and the records and data from which such reports are made shall be accessible to the United States on demand of the Secretary.

(10) A charge of twenty-five cents ($0.25) per acre-foot shall be made for water delivered to the District hereunder during the Boulder Dam cost repayment period. It is understood by the District that it may divert water above Boulder Canyon Dam, but that such diversion of water above the dam will reduce the amount of power otherwise available at said dam, and may reduce the amount which would have been utilized, except at times when the reservoir is spilling, and an additional charge, determined as stated below, will be made on account of any such reduction in energy which would otherwise have been utilized in case water is diverted above the dam. The energy which could have been generated by the water diverted above the dam and which would have been utilized, at times when the reservoir is not spilling will be calculated from the effective head, the quantity of water diverted and the overall efficiency of the power plant, as determined by the Secretary, whose determination shall be conclusive and binding upon the parties hereto. The additional charge per month for diversion above the dam will be the product of such amount of energy and the rate per kilowatt hour for

firm energy at Boulder Canyon Dam in effect at the time of such diversion. Nevertheless if such diversion during any year (June 1st to May 31st, inclusive) has not reduced the amount of firm energy during such year, for which the United States has contracted, the diversion, to the extent that no reduction in firm energy has been occasioned, shall be computed at the rate for secondary energy then in force and credit given on the ensuing year's power bills of the District for the difference between the amount charged therefor and the amount so determined. The Secretary's determination of such credit shall be conclusive. The reservoir shall be considered as spilling whenever water is being discharged in excess of the amount used for the generation of power, whether such waste occurs over the spillway or otherwise. Energy equivalent to water delivered above the dam, determined as above, for which the firm energy rate is charged, shall be included in the total firm energy available at the dam, defined as four billion, three hundred thirty million (4,330,000,000) kilowatt hours per year (June 1st to May 31st, inclusive), upon completion of the dam, as announced by the Secretary, and decreasing uniformly thereafter by eight million seven hundred sixty thousand (8,760,000) kilowatt hours per year, and also included in the District's allotment of firm energy. Nevertheless if it be determined by the Secretary that the rate of decrease above stated is not in accord with actual conditions, the Secretary reserves the right to fix a lesser rate for any year (June 1st to May 31st, inclusive), in advance.

(11) The District shall pay monthly for all water delivered to it hereunder, or diverted by it from the Colorado River, in accordance with the rate herein in Article ten (10) established. Payments shall be due on the

first of the second month immediately succeeding the month in which water is delivered and/or diverted. If such charges are not paid when due, a penalty of one per centum (1%) of the amount unpaid shall be added thereto, and thereafter an additional penalty of one per centum (1%) of the amount unpaid shall be added on the first day of each calendar month during such delinquency.

(12) The United States reserves the right to refuse to deliver water to the District in the event of default for a period of more than twelve (12) months in any payment due or to become due the United States under this contract.

(13) The Secretary or his representatives, shall at all times have the right of ingress to and egress from all works of the District for the purpose of inspection, repairs and maintenance of works of the United States, and for all other proper purposes. The Secretary or his representatives shall also have free access at all reasonable times to the books and records of the District relating to the diversion and distribution of water delivered to it hereunder with the right at any time during office hours to make copies of or from the same.

(14) Disputes or disagreements as to the interpretation or performance of the provisions of this contract shall be determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such proceedings. Whenever a controversy arises out of this contract, and the parties hereto agree to submit the matter to arbitration the District shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators, but in the

event of their failure to name all or any of the three arbitrators within five (5) days after their first meeting, such arbitrators, not so elected, shall be named by the Senior Judge of the United States Circuit Court of Appeals for the Ninth Circuit. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

(15) There is reserved to the Secretary the right to prescribe and enforce rules and regulations governing the delivery and diversion of water hereunder. Such rules and regulations may be modified, revised and/or extended from time to time after notice to the District and opportunity for it to be heard, as may be deemed proper, necessary, or desirable by the Secretary to carry out the true intent and meaning of the law and of this contract, or amendments hereof, or to protect the interests of the United States. The District hereby agrees that in the operation and maintenance of its diversion works and aqueduct, all such rules and regulations will be fully adhered to.

(16) This contract is made upon the express condition and with the express understanding that all rights hereunder shall be subject to and controlled by the Colorado River Compact, being the compact or agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," which Compact was approved in Section 13 (a) of the Boulder Canyon Project Act.

(17) Claims of the United States arising out of this contract shall have priority over all others, secured or unsecured.

(18) This contract is subject to appropriations being made by Congress from year to year of moneys sufficient to do the work provided for herein, and to there being sufficient moneys available in the Colorado River Dam Fund to permit allotments to be made for the performance of such work. No liability shall accrue against the United States, its officers, agents, or employees, by reason of sufficient moneys not being so appropriated nor on account of there not being sufficient moneys in the Colorado River Dam Fund to permit of said allotments. This agreement is also subject to the condition that if Congress fails to appropriate moneys for the commencement of construction work within five (5) years from and after execution hereof, or if for any other reason construction of Boulder Canyon Dam is not commenced within said time and thereafter prosecuted to completion with reasonable diligence, then and in such event either party hereto may terminate its obligations hereunder upon one (1) year's written notice to the other party hereto.

(19) All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States.

(20) Nothing contained in this contract shall be construed as in any manner abridging, limiting or depriving the United States of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have.

(21) No interest in this agreement is transferable, and no sublease shall be made, by the District without the written consent of the Secretary, and any such attempted transfer or sublease shall cause this contract to become subject to annulment, at the option of the United States.

(22) No Member of or Delegate to Congress or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

In witness whereof, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,
By RAY LYMAN WILBUR,
Secretary of the Interior.

Approved as to form,
W. B. MATHEWS,
General Counsel.

Attest:
S. H. FINLEY,
Secretary of the Board of
Directors.

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,
By W. P. WHITSETT,
Chairman of the Board of
Directors.

(Corporate Seal)

POWER REGULATIONS.

I.

The United States will, at its own cost, construct in the main stream of the Colorado River at Black Canyon, a dam, creating thereby at the date of completion, a storage reservoir having a maximum water surface elevation at about twelve hundred twenty-two (1222) feet above sea level (U. S. Geological Survey datum) of a capacity of about twenty-nine million five hundred thousand (29,500,000) acre-feet. The United States will also construct in connection therewith outlet works, pressure tunnels, penstocks, power plant building, and furnish and install generating, transforming and high voltage switching equipment for the generation of the energy allocated to the various allottees respectively. Title to the Boulder Canyon Dam, reservoir, plant and incidental works, shall forever remain in the United States.

II.

The United States will operate and maintain the dam, reservoir, pressure tunnels, penstocks to but not inclusive of the shut-off valves at the inlets to the turbine casings, and outlet works, and will have full control of all water passing the dam for any and all purposes. The dam and reservoir will be operated and used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact, and, third, for power.

III.

The United States will lease to the City of Los Angeles, referred to herein as the City, for fifty (50) years from the date at which energy is ready for delivery to the City, as announced by the Secretary, such power plant units and corresponding plant facilities and incidental structures as may be necessary to generate the energy allocated to it and energy for those allottees for whom the City is herein designated the generating agency, together with the right to generate such electrical energy.

The United States will lease to Southern California Edison Company, Ltd., referred to herein as the Company, such power plant units and corresponding plant facilities and incidental structures as may be necessary to generate the energy allocated to it and energy for those allottees for whom the Company is herein designated the generating agency, together with the right to generate such electrical energy, for a period beginning with the date at which the first of such power plant units is ready for operation and water is available therefor as announced by the Secretary, and ending at a time fifty (50) years from the date at which energy is ready for delivery to the City.

The machinery and equipment under lease to either lessee shall be operated and maintained by such lessee without interference from or control by the other lessee, but subject nevertheless to the supervisory authority of the Secretary or his representative, under the terms of the lease.

Subject to conditions hereinafter stated, the designation of generating agencies shall be as follows:

Generation of energy allocated to and used by the States of Nevada and Arizona shall be effected by the City.

Generation of energy allocated to Municipalities, shall be effected by the City.

Generation of energy allocated to the District shall be effected by the City.

Generation of energy allocated to the Companies shall be effected by Southern California Edison Company, Ltd.

The lessees and allottees may make other arrangements for generation, subject to the approval of the Secretary.

Disputes and disagreements between any allottee and the lessee generating energy for it, with respect to such generation, and/or the cost thereof, shall be determined by the Secretary unless otherwise specifically provided by contracts thereof with the Secretary.

All generation shall be effected at cost, except as provided in contracts with the United States.

IV.

The respective portions of the power plant and appurtenant structures shall be operated and maintained by the City and the Company, severally, under the supervision of a Director appointed by the Secretary. The City and the Company shall each be responsible for the operation and maintenance of that part of the power plant operated by it and shall bear the cost thereof. The United States will pay each lessee in the form of credits upon the account of such lessee for amounts due the United States under its contract, the cost incurred by it

in generating energy for other allottees for whom it is the designated generating agency, and will require such other allottees to repay such cost to the United States. Except as to off-peak power the term "cost" as used with reference to generating energy for other allottees, shall include a proper proportionate allowance for amortization of the amounts for which the respective lessees are obligated to the United States on account of use of machinery and equipment and interest on the respective lessees' prepayments thereof; a proper proportionate part of any annuity set up in accordance with regulations of the Secretary, and any additional expenditures made by the respective lessees with the approval of the Secretary for the purpose of meeting the obligation of the lessees to make replacements; and a proper proportionate part of the actual outlay of the lessees for operating such machinery and equipment and keeping the same in repair, including reasonable overhead charges. The extent of the allowance for the several items and the system of accounting therefor, shall be prescribed by the Secretary under uniform regulations to be promulgated by him in accordance with the Boulder Canyon Project Act. The United States will compensate each lessee for the generation by it of any secondary energy not taken by the District or the lessees in accordance with Article V hereof but disposed of by the United States, such compensation to cover the pro rata cost thereof as defined in this article (in proportion to the total kilowatt-hours generated in that month by each lessee), during the time said secondary energy was generated. Such secondary energy will be disposed of by the United States subject only to the prior right thereto of the District and/or the lessees.

The Director, among other powers, shall have authority to enforce rules and regulations promulgated by

the Secretary in accordance with the Boulder Canyon Project Act, respecting operation and maintenance of the power plant and appurtenant works and structures.

Prior to the promulgation of any additional regulations, or the change or modification of regulations, the Secretary shall give any lessee and any allottee affected thereby, an opportunity to be heard.

V.

The following allocation of energy is made: (the percentages stated being percentages of the total firm energy available) subject, however, to the conditions hereinafter stated:

A. To the State of Nevada, for use in Nevada, not exceeding eighteen per centum (18%) of said total firm energy.

B. To the State of Arizona, for use in Arizona not exceeding eighteen per centum (18%) of said total firm energy.

Should either of the States not take its full eighteen per centum (18%) allocation within a period of twenty (20) years hereof, the other may then contract for the energy not so taken up to four per centum (4%) of the total firm energy, provided that the combined amount used by the two states shall not, at any time, exceed thirty-six per centum (36%) of such total firm energy.

C. To the Metropolitan Water District of Southern California (hereinafter referred to as the District) so much energy as may be needed and used for pumping Colorado River Water into and

in its Aqueduct for the use of such District within the following limits:

(1) Not exceeding thirty-six per centum (36%) of said total firm energy; plus

(2) All secondary energy developed at the Boulder Dam power plant as provided in these regulations; plus

(3) So much of the firm energy allocated to the States, the City and the Company as may not be in use by them. Energy allocated to the States but not in use by them shall be released to the District by the two lessees equally (unless they agree upon a different ratio) as follows:

(a) If the District makes a firm contract with the Secretary for the balance of the lease period for part or all of such unused States energy (subject to the first right of the States thereto) such contract shall be made effective upon two years' written notice to the Secretary, and compensation to the lessees, respectively, for main transmission line property rendered idle;

(b) If the District does not so make a firm contract for such energy, then energy allocated to the States but not in use by them, shall be released to the District upon not less than fifteen (15) months' written notice to the Secretary and at such compensation as the District and such lessees, respectively, may agree upon, to cover cost and overhead of replacing energy which otherwise would have been received at the Pacific Coast end of the main transmission lines by the lessees, respectively. Such cost shall include interest on

and depreciation and operation and maintenance of the plant capacity while required for the generation of such substitute energy; and also appropriate allowance for interest on and maintenance and depreciation of plant capacity rendered idle because of cessation of generation of such substitute energy until such time as such plant capacity would otherwise have been installed by the lessees, respectively, for their own requirements. If the District and the respective lessees fail to agree on such compensation, such energy shall nevertheless be released to the District, and the disagreement shall be determined by arbitration or as may be provided in the respective contracts of the parties with the Secretary. Such determination shall include allowance for items of cost, and overhead as specified in this paragraph. Pending such determination, energy so released shall be paid for by the District at the rate for firm energy but the determination of compensation shall not be controlled by such rate. During any year beginning June first, the District shall not use any secondary energy nor any unused State energy, until it has first used subsequent to June first, next preceding, an amount of firm energy equivalent to one-twelfth of the amount of firm energy it is obligated to take and/or pay for annually multiplied by the number of months elapsed since June first next preceding.

(4) If, due to temporary deficiency in secondary energy regularly used by the District substitute energy is requested by the District in excess of the energy made available under the foregoing sub-paragraph (3) (b) the City and/or the

Company may release so much energy as may be practicable on the same terms as provided in subsection (3) (b) preceding.

D. To the municipalities of Anaheim, Beverly Hills, Burbank, Colton, Fullerton, Glendale, Newport Beach, Pasadena, Riverside, San Bernardino and Santa Ana, (referred to herein as "the municipalities"), six per centum (6%) in all, to be allocated among them as they may agree; but if no agreement is submitted to the Secretary on or before April 15, 1931, the Secretary shall determine the allocation of each.

E. To the City of Los Angeles, thirteen per centum (13%).

F. To Southern California Edison Company, Ltd., the Southern Sierras Power Company, the San Diego Consolidated Gas and Electric Company and the Los Angeles Gas and Electric Corporation, referred to herein as the companies, nine per centum (9%) in all, division whereof among the companies shall be made according to mutual agreement among them, if possible. If no such agreement is submitted to the Secretary on or before April 15, 1931, the Secretary shall determine the allocation of each.

The foregoing allocations are subject to the following conditions:

(i) So much of the energy allocated to the States (thirty-six per centum (36%) of the firm energy) and not in use by them, or failing their use, by the District for the above purpose, shall be

taken and paid for one-half by the City and one-half by the Company.

(ii) All of the energy allocated to the municipalities may be contracted for in compliance with these regulations by any one or more of them, as they may agree, on or before April 15, 1931. So much of the energy allocated to the municipalities as is not so contracted for, or, if contracted for, not used by them directly or under contract for municipal purposes and/or distribution to their inhabitants shall be taken and paid for by the City.

(iii) So much of the energy allocated to the Southern Sierras Power Company, the San Diego Consolidated Gas and Electric Company, and the Los Angeles Gas and Electric Corporation as is not firmly contracted for by them, severally, in compliance with these regulations on or before April 15, 1931, shall be taken and paid for by the Company.

(iv) If any allottee is permitted by the United States to divert water from the reservoir at a time when the reservoir is not spilling, in consequence of which the amount of energy which would have been utilized is diminished, such diminution, to such extent as may be provided in the contract, shall be debited to the allocation of firm energy herein made to such allottee; and charge for the energy equivalent of such diversion shall be made, and the amount of energy which the allottee shall otherwise be obligated to take and pay for hereunder shall be correspondingly reduced.

The reservoir shall be considered as spilling whenever water is being discharged in excess of the amount used for the generation of power, whether such waste occurs over the spillway or otherwise.

(v) Each of the States of Arizona and Nevada may, from time to time within the period of the aforesaid lease, contract for energy for use within such State in any amount until the total allocated respectively to each is in use as provided above; and may terminate such contract, or contracts, without prejudice to the right to again contract for such energy. All such contracts shall be executed with the Secretary. A contract requiring one thousand (1000) horsepower (of maximum demand) or less may become effective or be terminated on six months' written notice of requirement or termination given the Director by the State; provided, that the notice given shall be two years if in the twelve months preceding said notice of demand the total increment to such state has exceeded five thousand (5000) horsepower of maximum demand or if in the twelve months preceding said notice of termination the decrement to such state has exceeded five thousand (5000) horsepower of maximum demand. In all cases the Director shall immediately transmit such notice to each lessee. Whenever the amount in use is in excess of five thousand (5000) horsepower of maximum demand, the lessees respectively shall be compensated for property rendered idle by use of such excess in such amount as the Secretary shall determine to be equitable. Firm energy not contracted for by the States shall be available for use

by the District as herein elsewhere provided, and if not in use by the States and/or the District, shall be taken and paid for equally by the two lessees. No right which may be available to a State under section five (5) (c) of the Boulder Canyon Project Act to execute a firm contract for electrical energy for use within the State shall be impaired by any provision of the aforesaid lease or of any contracts with other parties; but if contract thereunder be executed by such State with the Secretary no provision of said lease shall apply for the benefit of such State. If in consequence of execution of such contract the Secretary requires the allocation to either lessee or to an allottee using such lessee's main transmission lines to be diminished, such lessee may terminate its rights and obligations hereunder within two months thereafter on written notice to the Secretary. Provided, further, that the combined allocation of nineteen per centum (19%) as herein made to the city and the municipalities shall not be reduced because of any such firm contract with a state for energy.

The District shall have the right to purchase and use all secondary energy as provided in these regulations for the purposes stated in the first paragraph of subdivision (c) of this article. The City and the Company shall each have the right to purchase and use one-half of all secondary energy not used by the District. Any such energy not used by one lessee shall be available, for the time being, to the other. If secondary energy is not taken by the City, the District, and/or the Company, then and in such event, the United

States reserves the right to take, use and dispose of such energy, from time to time, as it sees fit, giving credit therefor as provided in these regulations.

In the event the District shall fail for any reason to use all or any of the firm energy herein allotted to it for the only purpose for which said firm energy is allotted to it, that is, for pumping water into and in its aqueduct, then no disposition shall be made of such firm energy by the Secretary without first giving to a successor to the District which may undertake to build or maintain a Colorado River Aqueduct the opportunity to take said firm energy for the same purpose and under the same terms as those to which the District was obligated.

In the event no such successor takes said firm energy as provided above, then no disposition of such firm energy shall be made by the Secretary without first giving to each lessee the opportunity to contract on equal terms and conditions, to be prescribed by the Secretary, for one-half of such energy, together with such portion of the remainder as the other lessee shall not elect to take.

The United States reserves the right, in case the dam which it erects provides a maximum water surface elevation in excess of one thousand two hundred twenty-two (1222) feet above sea level (U. S. Geological Survey datum), and thereby increases the quantity of firm energy above the quantity of four billion two hundred forty million (4,240,000,000) kilowatt-hours allocated above, to dispose of such increase, but not to exceed ninety million (90,000,000) kilowatt-hours per year (June 1st to

May 31st, inclusive) to any municipality or municipalities by firm contract executed with the Secretary on or before April 15, 1931. Such disposition shall be without prejudice to any provision of said lease or of the allocation above referred to. So much of such additional energy as is not so contracted for shall be taken and paid for by the City. Generation of such additional energy shall in any event be effected by the City.

VI.

Contractors hereunder shall agree as follows:

(1) To pay the United States for the use of falling water for the generation of energy for their own use, respectively, by the equipment leased hereunder, as follows:

(a) One and sixty-three hundredths mills ($0.00163) per kilowatt-hour, (delivered at transmission voltage) for firm energy;

(b) One-half mill ($0.0005) per kilowatt-hour, (delivered at transmission voltage) for secondary energy;

(2) The lessees of the power plant shall compensate the United States for the use of leased equipment as herein elsewhere provided;

(3) The lessees shall also maintain said equipment in first-class operating condition, including repairs to and replacements of machinery;

(4) Allottees other than the lessees shall pay the United States, for credit to the lessees, on account of use of the leased equipment.

(5) Allottees other than the lessees shall pay the United States, for credit to the lessees, on ac-

count of maintenance of said equipment, including repairs to and replacements of machinery, provided however, that, if the expenditures for replacements shall exceed at any time the sum accumulated by the lessees as a depreciation reserve in accordance with rules and regulations prescribed by the Secretary, pursuant to the Boulder Canyon Project Act, less all amounts previously withdrawn for replacements, then the rates aforesaid shall be readjusted as hereinafter provided so as to reimburse the said lessees severally for such excess expenditures within the term of said lease.

All energy shall be measured at generator voltage and suitable metering equipment shall be provided and installed by the United States for this purpose. Suitable correction shall be made in the amounts of energy as measured at generator voltage to cover step-up transformer losses and energy required for operation of station auxiliaries, in determining the amounts of energy delivered at transmission voltage as provided in these regulations.

At the end of fifteen (15) years from the date of execution of lease and every ten (10) years thereafter, the above rates of payment for firm and secondary energy shall be readjusted upon demand of any party thereto, either upward or downward as to price, as the Secretary may find to be justified by competitive conditions at distributing points or competitive centers.

The rate for falling water for generation of firm energy, which shall be uniform for all lessees, provided for by any such readjustment shall be arrived at by deducting from the price of electrical energy justified by

competitive conditions at distributing points or competitive centers,—(1) all fixed and operating costs as provided for herein of transmission to such points,—(2) all fixed and operating costs of such portion of the power plant machinery as is to be operated and maintained by the several lessees, including the costs of repairs and replacements, together with readjustment as to replacements as is provided for in paragraph five (5) above; it being understood that such readjusted rates shall under no circumstances exceed the value of said energy, based upon competitive conditions at distributing points or competitive centers.

If the lessees or either of them shall not obtain a renewal of said lease at the expiration of the contract period, equitable adjustment for major replacements of machinery made between the date of the last readjustment of rates and the end of the contract period shall be made at the expiration of the lease.

VII.

The amount of firm energy for the first year of operation, (June 1 to May 31, inclusive) following the date of the completion of the dam as announced by the Secretary shall be defined as being four billion two hundred forty million (4,240,000,000) kilowatt-hours. For every subsequent year the amount defined as firm energy shall be decreased by eight million seven hundred sixty thousand (8,760,000) kilowatt-hours from that of the previous year.

Nevertheless, if it be determined by the Secretary that the rate of decrease of kilowatt-hours per year as above stated, is not in accord with actual conditions, the

Secretary reserves the right to fix a lesser rate for any year (June 1st to May 31st, inclusive) in advance.

If the dam erected by the United States provides a maximum water surface elevation in excess of 1222 feet above sea level (U. S. Geological Survey datum), the United States reserves the right to dispose of additional firm energy thereby made available, not to exceed ninety million (90,000,000) kilowatt-hours per year, subject to pro rata of the eight million seven hundred sixty thousand (8,760,000) kilowatt-hours annual diminution above provided for.

The term "secondary energy" wherever used herein shall mean all electrical energy generated in one year (June 1st to May 31st, inclusive) in excess of the amount of firm energy as hereinabove defined, available in such year.

VIII.

The contractors shall pay monthly for all energy in accordance with the rates established or provided for herein. When energy taken in any month is not in excess of one-twelfth (1/12) of the minimum annual obligation, bill for such month shall be computed at the rate for firm energy in effect when such energy was taken on the basis of the actual amount of energy used during such month. All energy used during any month in excess of one-twelfth (1/12) of the minimum annual obligation shall be paid for at the rate for secondary energy in effect when such energy was taken; provided, however, that the secondary rate shall not apply to any energy taken during any month unless and until an amount of energy equivalent to one-twelfth 1/12 of the minimum annual obligation has been taken for all months beginning with the month of June immediately preceding; pro-

vided, however, that the bill for the month of May shall not be less than the difference between the minimum annual payment, and the sum of the amounts charged for firm energy during the preceding eleven (11) months. The United States will submit bills to all contractors by the fifth of each month immediately following the month during which the energy is generated, and payments shall be due on the first day of the month immediately succeeding. If such charges (less, in bills to lessees, credit allowances due lessees for generation for other allottees) are not paid when due, a penalty of one per centum (1%) of the amount unpaid shall be added thereto, and thereafter an additional penalty of one per centum (1%) of the amount unpaid shall be added on the first day of each calendar month thereafter during such delinquency.

IX.

The total payments made by each contractor for firm energy available in any year (June 1st to May 31st, inclusive), whether any energy is generated or not, exclusive of its payments for use of machinery, shall not be less than the number of kilowatt-hours of firm energy available to said contractor and which said contractor is obligated to take and/or pay for during said year, multiplied by one and sixty-three hundredths mills ($0.00163), or multiplied by the adjusted rate of payment for firm energy in case the said rate is adjusted as provided in article VI hereof, less credits on account of charges to other allottees, as provided for and referred to in article IV hereof. For a fractional year at the beginning or end of the contract period, the minimum annual payment for firm energy shall be proportionately adjusted in the ratio that the number of days water is available for generation of energy in such fractional year bears to three hundred

sixty-five (365). Provided, however, that in order to afford a reasonable time for the respective lessees to absorb the energy contracted for, the minimum annual payments by each for the first three (3) years after energy is ready for delivery to such lessees, respectively, as announced by the Secretary, shall be as follows, in percentages of the ultimate annual obligation, to take and/or pay for firm energy:

1st Year, 55%
2nd Year, 70%
3rd Year, 85%
4th Year and all
subsequent Years, 100%

During said absorption period, if the quantity of energy taken in any one year (June 1st to May 31st, inclusive), is in excess of the above percentages of the ultimate obligation during such year to take and/or pay for firm energy, such excess shall be paid for at the rate for secondary energy. Provided, further, that the minimum annual payment shall be reduced in case of interruptions or curtailment of delivery of water as provided in paragraph X hereof.

X.

The United States will deliver water continuously to each lessee in the quantity, in the manner, and at the times necessary for the generation of the energy which each of said lessees has the right and/or obligation to generate under its contract in accordance with the load requirements of each of said lessees and of allottees for which the respective lessees are generating agencies, excepting only that such delivery shall be regulated so as not to interfere with the necessary use of said Boulder

Canyon Dam and Reservoir for river regulation, improvement of navigation, flood control, irrigation, or domestic uses, and the satisfaction of present perfected rights in or to the waters of the Colorado River, or its tributaries, in pursuance of article VIII of the Colorado River Compact. The United States reserves the right temporarily to discontinue or reduce the delivery of water for the generation of energy at any time for the purposes of maintenance, repairs and/or replacements, or installation of equipment, and for investigations and inspections necessary thereto; provided, however, that the United States shall, except in case of emergency, give to the lessees reasonable notice in advance of such temporary discontinuance or reduction, and that the United States shall make such inspections and perform such maintenance and repair work after consultation with the lessees at such times and in such manner as will cause the least inconvenience to the lessees and the allottees, and shall prosecute such work with diligence, and, without unnecessary delay, will resume delivery of water so discontinued or reduced. Should the delivery of water be discontinued or reduced below the amount required, severally, for the normal generation of firm energy for the payment of which the contractor obligates itself, the total number of hours of such discontinuance or reduction in any year shall be determined by taking the sum of the number of hours during which the delivery of water is totally discontinued, and the product of the number of hours during which the delivery of water is partially reduced and the percentage of said partial reduction below the actual quantity of water required for the normal generation of firm energy. Total or partial reductions in delivery of water which do not reduce the power output below the amount required at the time for the normal generation of

firm energy, will not be considered in determining the total hours of discontinuance in any year. The minimum annual payment shall be reduced by the ratio that the total number of hours of such discontinuance bears to eight thousand seven hundred sixty (8760). In no event shall any liability accrue against the United States, its officers, agents and/or employees, for any damage, direct or indirect, arising on account of drought, hostile diversion, act of God, or of the public enemy, or other similar cause.

Each lessee shall make full and complete written monthly reports as directed by the Secretary, on forms to be supplied by the United States, of all electrical energy generated by it, and the disposition thereof to allottees. Such reports shall be made and delivered to the Director on the third day of the month immediately succeeding the month in which the electrical energy is generated, and the records and data from which such reports are made shall be accessible to the United States on demand of the Secretary.

XI.

Any agency receiving a contract for electrical energy equivalent to one hundred thousand (100,000) firm horsepower, or more, may when deemed feasible by the Secretary, from engineering and economic considerations and under general regulations prescribed by him, be required to permit any other agency having contracts for less than the equivalent of twenty-five thousand (25,000) firm horsepower, upon application to the Secretary made within sixty (60) days from the execution of the contract of the agency the use of whose transmission line is applied for, to participate in the benefits and use of any main transmission line constructed or to be con-

structed by the former for carrying such energy (not exceeding, however, one-fourth (¼) the capacity of such line), upon payment by such other agencies of a reasonable share of the cost of construction, operation and maintenance thereof.

XII.

The use is authorized of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation and maintenance of main transmission lines, to transmit electrical energy generated at Boulder Canyon Dam, together with the use of such public and reserved lands of the United States as may be designated by the Secretary, from time to time, for camp sites, residences for employees, warehouses and other uses incident to the operation and maintenance of the power plant and incidental works.

XIII.

The Secretary, or his representatives, shall at all times have the right of ingress to and egress from all works of the contractors for power or power privileges, for the purpose of inspection, repairs and maintenance of works of the United States, and for all other proper purposes. The Secretary or his representatives shall also have free access at all reasonable times to the books and records of contractors for power or power privileges, relating to the generation, transmission, and disposition of electrical energy with the right at any time during office hours to make copies of or from the same.

XIV.

All patents, grants, contracts, concessions, leases, permits, licenses, rights of way, or other privileges from

the United States or under its authority, necessary or convenient for the use of waters of the Colorado River or its tributaries, or for the generation or transmission of electrical energy generated by means of the waters of said river or its tributaries, whether under the Boulder Dam Project Act, the Federal Water Power Act, or otherwise, shall be upon the express condition and with the express covenant that the rights of the recipients or holders thereof to waters of the river or its tributaries, for the use of which the same are necessary, convenient, or incidental, and the use of the same shall likewise be subject to and controlled by said Colorado River Compact.

XV.

All contracts for purchase of energy available at Boulder Canyon Dam shall be made directly with the United States.

XVI.

No contract for electrical energy or for generation of electrical energy shall be of longer duration than fifty (50) years from the date at which such energy is ready for delivery as announced by the Secretary.

XVII.

The holder of any contract for electrical energy not in default thereunder shall be entitled to a renewal thereof upon such terms and conditions as may be authorized or required under the then existing laws and regulation, unless the property of such holder dependent for its usefulness on a continuation of the contract be purchased or acquired and such holder be compensated for damages to its property, used and useful in the transmission and

distribution of such electrical energy and not taken, resulting from the termination of the supply.

XVIII.

All contracts shall be subject to these, and such other rules and regulations conforming to the Boulder Canyon Project Act as the Secretary may from time to time promulgate; provided, however, that no right under any contract then existing shall be impaired or obligation thereunder be extended thereby; and provided further that opportunity for hearing shall be afforded such contractors by the Secretary prior to modification or repeal thereof or promulgation of additional regulations.

Washington, D. C.
April 25, 1930.

RAY LYMAN WILBUR,
Secretary of the Interior.